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MASSACHUSETTS SOCIETY FOR PROMOTING AGRICULTURE.

Massachusetts Farm Law:

A MONOGRAPH

ON

THE LEGAL RIGHTS AND LIABILITIES

OF FARMERS.

CONTAINING ARTICLES UPON SUCH SUBJECTS AS THE FOLLOWING:

How to Buy a Farm; How Far the Farm Extends; What a Deed of a Farm Includes; Hiring Help; Rights in the Road; Ways over the Farm; As to Farm Fences; Impounding Cattle; Farmer's Liability for his Animals; Dogs; Liability for his Men; About Fires; Water Rights, Drainage and Ice; Trespassing on the Farm; Exempt Property; Overhanging Trees

With Illustrations and Citations from Other States,

BY

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PUBLISHER'S PREFACE.

The substance of the following pages was originally delivered by Edmund H. Bennett as a lecture before the Massachusetts State Board of Agriculture, at Hingham, Massachusetts, December 5, 1878. The lecturer was at that time a member of the Board. And the circumstances under which the lecture was first delivered may account for the use of a familiar style. Agricultural and other journals throughout the country have reprinted it, and it has been cited in the opinions of the courts. In the present revision of the lecture some new matter and authorities have been added, and some slight changes made.

The Massachusetts Society for Promoting Agriculture publish the present volume under the title of "Massachusetts Farm Law."

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CHAPTER I.

HOW TO BUY A FARM.

In an article upon the legal rights and duties of farmers, the first inquiry naturally is, how to buy a farm.

It is quite generally known that a mere oral bargain for a farm is not binding in law upon either party; but it may not be so well understood that an offer to sell a farm for a given price, even though it be by letter or other similar writing, is not binding upon the proposer until actually accepted by the buyer, and he has also agreed to take it, and pay the price stated in the offer; therefore the owner may retract his offer to sell at any time before it is accepted and he is notified thereof. And although, in making his offer to sell, he should expressly give you a certain number of days in which to decide whether to take it or not, he may, nevertheless, if you have not accepted in the meantime, change his mind and sell to another who offers a higher price, even before the given time has expired; and you would have no legal redress for your disappointment. 12 Johns. 190. 4 Johns. 235.

Nay, more; although you had fully made up your mind to take the farm, but had not notified the owner of that fact, and should go to great trouble and expense in buying stock, tools, agricultural implements, etc., to carry on the farm, and should even move your family there to take possession, the owner

might even then refuse to sell, and you would have no legal remedy either to compel him to convey, or for the expenses you had thus incurred relying upon his keeping his word. In some states, although the bargain for a farm be oral, yet if the purchaser has paid part of the price, and has taken possession and incurred expense in making improvements, a court of equity will compel the owner to make a conveyance, as he ought to do without such compulsion; but this may not be universally so, and is always an expensive and dilatory remedy; the safer way in such cases is to take a *bond* for a deed, as it is called. An ordinary "refusal" of property, as it is termed, is a dangerous thing to rely upon, unless you are dealing with a man whose "word is as good as his bond," and they are very scarce! And, if a particular time is given you in which to accept an offer to sell, you should be particular to signify your acceptance strictly within the time, and to do so entirely unconditionally and without any qualifications, but exactly as it was made. In one instance a man had ten days in which to make up his mind, and on the night of the last day, about half-past eleven at night, he called at the owner's house, after he was abed and asleep, and said he would take the farm. The owner refused to get up, or to take the money the next day, and the buyer tried to get the farm by a suit-at-law; but it was decided that he came too late on the last day, and he not only lost his trade, but had to pay the costs of his suit. In another case A wrote to B he would sell him his farm for three thousand dollars cash. B wrote back immediately he would take it, if A would make out his deed and send it to a lawyer for examination, and, if all right, the lawyer would pay him his three thousand dollars; but it was decided that B had not duly accepted A's offer,

46 N. Y. 467.

Browne on St. of Frauds, C. 19.

17 Wall. 384.
62 Me. 360.
20 N. J. Eq. 55.

26 Miss. 309.

because he did not enclose the cash in his letter, but asked A to carry his deed to a third person for examination, and consequently that A might withdraw and sell to another party. 53 Me. 511.

If the negotiations for a farm are by letters, some peculiar complications may arise.

It is generally understood that when a man offers to sell another a farm by letter, the bargain is completely closed the moment the other deposits his letter of acceptance in his post-office, duly directed to the former. After that time neither party is at liberty to change his mind or retract his steps. And this is said to be so although the letter miscarries, or the mail is robbed, and so the seller never hears that his proposition has been accepted at all. 11 N. Y. 441. 42 Wisc. 152. 4 Ex. Div. 216.

If therefore, in such a case, tired of waiting for a reply, he should sell the farm in good faith to another, the first party might sue him for non-fulfilment of his contract with him, and perhaps compel him to pay heavy damages. Whereas, if he should refuse to convey the farm to the second purchaser, after he had learned that the first wished to claim it, the last might also bring suit, and so the poor man is literally "between two fires." This seems very strange, but I fear such is the generally established rule. As the lawyers say, *ita lex scripta est.* If it be so, it is, like some other things written, "hard to be understood!" If that law applies to all kinds of contracts I suppose if a young farmer sends a note to his best girl, offering to marry her, and she instantly replies "Yes," but the sweet note is lost in the mail and never reaches the party intended, and tired of waiting, he marries the second best, the first one might come down on him for breach of promise. Another singular situation might arise from the principle above stated. Suppose the would-be buyer

of a farm changes his mind immediately after his letter of acceptance has been sent off, and telegraphs the owner that he declines to take the farm, and then his letter of acceptance arrives the next day, what then,—can the owner hold him to take it?

But, supposing the grantor is willing to give you a deed, it must, in many states, have the seal of the grantor attached, or it is not sufficient. A scroll of the pen, or the letters L. S., are sufficient in some states, but it is always safe to have a seal. It may not be as well understood that it is not everywhere necessary that a deed should be witnessed or acknowledged, and recorded. These last two requisites may be essential to make the deed valid against the creditors of the grantor, or any one who subsequently bought the farm without knowing of the prior deed; and they are always so important they should never be neglected; and my first advice to you is, that, if you have any unrecorded deeds among your papers, you attend to that duty forthwith.

12 Met. 157.
6 Pet. 136.
66 Me. 226.

CHAPTER II.

HOW FAR THE FARM EXTENDS.

HAVING once obtained a sufficient deed, the next question seems to be how far the farm extends, or its proper boundaries. Three circumstances have more or less weight in determining this question:

1. The number of acres stated in the deed;

2. The length of the boundary lines running around the farm;

3. The visible monuments, such as trees, rocks, stake and stones, described as corners of the farm.

Of these three, the last is by far the most important, and, in case of any difference between them, controls all the rest. If the boundary lines are described as beginning at a certain stake and stones, thence to a certain tree, thence to a particular rock or stump, and so quite around the farm, the deed includes all the land inside of those monuments, all of which can be identified, although it may be many more acres than the deed calls it, and, on the other hand, it will really convey no more, although the number of acres within such bounds be much less than stated in the deed. So, if the monuments named are fixed and definite, they control the length of the side-lines mentioned in the deed; and if these lines be called a hundred feet long on every side, but the trees, rocks, stake and stones described as corners, are only ninety feet apart, the buyer will acquire a lot only ninety feet square, and not a hun-

15 Johns. 471.
2 Story, 278.
29 Ind. 574.
11 Ill. 279.

dred feet; and, *vice versa*, if the lines are described as only ninety feet long, but the given corners are a hundred feet from each other, the deed covers a lot a hundred feet square.

6 Mass. 13.
2 N. H. 303.
8 Wend. 190.

The quantity of acres mentioned is the very weakest means of knowing the real extent of the farm, although they be stated positively, and not under the elastic phrase of "more or less," as is so commonly done; and, generally speaking, a deficiency in number of acres gives the buyer no remedy against the seller for a return of any part of the purchase money, unless, perhaps, when it was clearly bought at the rate of so much *per acre*. In one case the bargain was for a well defined tract, followed by the words "containing 600 acres." In fact it contained only 421 acres, but the buyer had no redress for the difference. So much more important are the known monuments and boundaries than the number of acres stated, that, even if the vendor fraudulently and intentionally overstates the quantity, in order to deceive the purchaser, the latter has no redress, *if so be the other truly pointed out the boundaries in making the trade*; whereas a fraudulent statement of the *boundaries* would release the purchaser from the sale, although the farm contained as many, or even more acres, than the parties called it in making the bargain.

19 Pick. 387.
2 N. H. 287.
5 Mass. 355.
27 Gratt. 721.
2 Johns. 37.
102 Mass. 217.
Allen, 212.
9 N. Y. 183.

And, while speaking of fraudulent statements, perhaps I ought to warn you that fraudulent misrepresentations by the seller of a farm, as to how much hay or wood it will cut, how much stock it will keep, how much it had cost, or how much somebody else had offered for it, though made with intention to deceive you into a foolish trade, are not in law sufficient to excuse you from the purchase, or give you any redress, when you find out the deception.

2 Allen, 212.
5 Allen, 324.
8 Allen, 324.
102 Mass. 217.
63 Me. 12.

Such and other similar statements are considered in law merely as "dealer's talk," which, though not to be commended in the code of morals, the law takes little or no notice of. On the other hand, if he should falsely state that the farm *had* cut fifty tons of hay, when he knew it had not, his deception would make him liable; and the line is so thin between actionable fraud and the contrary, that experiments in that direction are rather dangerous. It is not wholesome to always dwell in the twilight.

106 Mass. 79. 56 N. Y. 83.

60 Me. 531. 46 N. H. 510.

If a boundary line runs to a tree, rock, stump or other similar natural object, it ordinarily goes to the center of the object; if it runs by a wall or fence, it passes along the middle of it, and not by the side, which, in a "Virginia fence" might be of some consequence. That such a fence, six or seven feet wide, is a lawful fence, see Ferris v. Van Buskirk, 18 Barb. 497.

13 Allen, 146.

18 Barb. 497. 4 Gray, 220.

So if the farm bounds by or on a brook, river, stream, etc., it usually extends to the middle of the current; not always to the middle of the *water*, but generally to the thread of the stream,—*ad filum aquæ*. If there be any islands between that center line and the bank, they belong to the owner of the main bank. If an island forms in the bed of an unnavigable river, directly in the channel, so as to lie partly on each side of the original thread of the river, such island will be divided between the opposite proprietors, exactly upon the line of the former thread of the stream at that place.

6 Conn. 471. 16 Me. 245, 357

6 Cow. 518. 2 N. H. 369. 153 Mass. 373.

40 N. H. 190.

17 Pick. 41.

Whereas, if the course of such a river changes, and cuts off a point of land on one side, thus making an island, such island still belongs to the original proprietor; and in such case, if the old bed of the river, being gradually deserted by the current, fills up, and new land is formed, such newly formed land is to be

divided between the opposite owners, as above stated, notwithstanding the island formed by the "cut-off" is not divided.

9 Cush. 544.

In like manner, if a deed is bounded on a mill-pond, reservoir-pond, or any artificial pond through which a perceptible current makes its way, the farmer ordinarily owns to the center of the current; on the other hand, if it be a large natural pond or lake, the line stops at the low-water mark on the shore, and does not extend into the pond; the public having rights in such large bodies of water as are useful for navigation, boating, sailing, and the like.

9 Gray, 269.

7 Allen, 167.
54 N. Y. 377.
9 N. H. 461.

As to farms bounding on the seashore, some different provisions exist in some states.

That strip of land between high and low water mark, generally termed "the flats," is a frequent subject of contention; and the question is often made to whom it belongs, —whether to the owner of the upland, or to the public. In many states the private ownership in such farms extends only to "highwater mark," and the public have rights in the belt between high and low water mark, so that if sea-weed, or other such thing be thrown up there by the tide, any one may take possession of it, and he who first gathers it has an absolute right to it. By force of a very early law in Massachusetts, and some other sea-coast states, if a deed describes the farm as bounding "by the sea," "by the salt water," "bay, harbor, cove, creek, stream, river, or tide-water," it generally includes the whole flats down to the *extreme* low-water mark (if not over a hundred rods), including the exclusive right to gather the sea-weed, or other such things washed up thereon by the tide. And no custom among the people in the neighborhood to collect sea-weed in such places, is of any validity in law. On the other hand, if the deed

9 Conn. 38.
25 N. J. 525.
3 Seam. 510.

147 Mass. 64.
105 Mass. 355.
7 Cush. 53.
8 Me. 85.
34 Me. 25.
36 Me. 313.
17 N. H. 526.
1 R. I. 106.
7 Met. 322.
136 Mass. 39.

bounds "by the shore," "beach, strand, flats, marsh, or cliff," it extends only to high-water mark, and does not give any right to the flats. 141 Mass. 97. 6 Mass. 435. 13 Gray, 254.

While yet again (such are the niceties of the law), if the phrase of the deed is "to the beach *or* sea," "to the *sea*-shore," "to the sea *or* flats," the grantee owns down to low-water mark, flats and all. In view of such nice and subtle distinctions (though founded on better reasons than are apparent), one is tempted to exclaim with the Earl of Warwick, in Shakespeare's Henry VI.: — 7 Cush. 195. 5 Gray, 328.

> "Between two hawks, which flies the higher pitch;
> Between two dogs, which hath the deeper mouth:
> Between two horses, which doth bear him best;
> Between two girls, which hath the merriest eye;
> I have, perhaps, some shallow spirit of judgment,—
> But in these nice sharp quillets of the law,
> Good faith, I am no wiser than a daw."

CHAPTER III.

WHAT A DEED OF A FARM INCLUDES.

4 Iowa, 146.
43 N. H. 306.
1 N. Y. 569.

Of course every one knows it conveys all the fences and stone walls on the farm; but all might not think it also included the fencing-stuff, posts, rails, etc., which had once been used in the fence, but had been taken down and piled up for future use again in the same place. But new fencing material, just bought, and never attached to the soil, would not pass. So piles of hop-poles stored away, if once used on the land, have been considered a part of it; but loose boards or scaffold-poles merely laid across the beams of the barn, and never fastened to it, would not be, and the seller of the farm might take them away. Standing trees, of course, also pass as part of the land; so do trees blown or cut down, and still left in the woods where they fell, but not if cut, and corded up for sale; the wood has then become personal property. As to standing trees, let me say here, if you wish to buy a lot of standing trees without buying the land, you had better make your bargain in writing, lest the other party change his mind and refuse to let you come on his land to cut them, which he might do before they were cut; and your only redress would be to sue him for damages, but you would lose your trees. On the other hand if you had actually cut them or a part of them before he notified you to the contrary, you would still have a right to go on to his premises and draw away the trees which had been cut with-

2 Hill, 142.
46 Ill. 163.

16 Ill. 480.
3 Iowa, 220.
2 Scam. 283.

1 Kernan, 123.

1 Lans. 219.

54 Me. 309.

14 Ark. 431.

15 Gray, 441.
11 Allen, 141.
153 Mass. 390.

out being liable as a trespasser, if you did no unnecessary damage.

If there be any manure in the barnyard, or in a compost-heap on the field, ready for immediate use, the buyer ordinarily, in the absence of any contrary agreement, takes that also as belonging to the farm, though it might not be so, if the owner had previously sold it to some other party, and had collected it together in a heap by itself, for such an act might be a technical severance from the soil, and so convert real into personal estate; and even a lessee of a farm could not take away the manure made on the place while he was in occupation. Growing crops also pass by the deed of a farm, unless they are expressly reserved; and, when it is not intended to convey those, it should be so stated in the deed itself: a mere oral agreement to that effect would not be, in most states, valid in law. Another mode is to stipulate that possession is not to be given until some future day, in which case the crops or manure may be removed before that time.

13 Gray, 93.
3 N. H. 503.
2 Hill, 142.
36 Vt. 261.
68 Me. 275.
11 Conn. 525.
43 Vt. 95.
64 Me. 410.
21 Pick. 367.
6 Greenl. 222.
15 Wend. 169.
24 Md. 418.
44 N. H. 118.
68 Me. 204.
17 Penn. St. 262.
7 Watts, 378.
68 Ill. 106.
20 Mich. 254.
19 Pick. 315.
46 Barb. 278.
22 N. H. 538.
39 Ill. 28.
41 Ill. 467.
5 Eng. 9.

Farmers frequently reserve, when selling a farm, or lot, the right to remove the wood, stone, or timber within a certain stated time. The question often arises whether the same is forfeited, if not removed within the time allowed, or whether they may be lawfully taken away afterwards. Apparently this depends much upon the peculiar language used in the reserving clause. In ordinary cases a reservation of a mere right to cut and carry away trees within a stated time, expires in that time and removing afterwards would be a trespass. While undoubtedly a reservation may be so worded, as to retain an absolute and indefeasible title to the things reserved, forever; and the permission to remove may be put in the form of a *stipulation* merely, a breach of which by re-

6 Me. 84.
13 Me. 122.
35 Vt. 19.
2 Keyes, 323.
1 Sandf. Ch. 52.
2 Barb. 622.

moving after that period, might render the party liable to some inconsiderable amount of damages, but the property itself would not be wholly forfeited. But this distinction is very nice, and to safely secure the perpetual right, requires as wise a pilot as to steer between Scylla and Charybdis. Don't employ a bungling justice of the peace to write that deed!

54 N. H. 109.
12 Vroom, 203.

As to the buildings on the farm, though generally mentioned in the deed, it is not absolutely necessary they should be. A deed of land ordinarily carries all the buildings on it belonging to the grantor, whether mentioned or not; and this rule includes the lumber and timber of any old building which has been taken down, or blown down, and been packed away for future use on the farm.

9 Conn. 374.
41 N. H. 505.
30 Penn. St. 185.
23 La. An. 284.

But if there be any temporary buildings on the farm built by some third person, with the farmer's consent that they should belong to the builder, as between the parties these remain the builder's personal property; and some think the deed would not convey these to a third person, since such buildings are personal property and do not really belong to the land-owner to convey. If that be so, the real owner thereof might move them off, although the purchaser of the farm supposed he was buying and paying for all the buildings on it. His only remedy in such case would be against the party selling the premises. But some courts decide that the honest buyer of the farm would take all the buildings on it, and if they did not justly belong to the seller, the real owner must sue him for wrongfully selling property not his own. As part of the buildings conveyed, of course the window-blinds are included, even if they be at the time taken off and carried to a painter's shop to be painted: it would be otherwise if they had been newly purchased and brought into

6 Greenl. 452.
38 N. H. 431.
14 Allen, 124.
121 Mass. 559.
3 Comst. 564.
10 Me. 429.
161 Mass. 560.
127 Mass. 542.
128 Mass.
38 N. H. 432.
51 Me. 160.

the house, but not yet attached or fitted to it. Lightning-rods also go with the house, if a farmer is foolish enough to be overcome by those smooth tongued lightning-rod agents. 40 Vt. 233.

A brick furnace in the cellar is considered a part of the house; and in Massachusetts this rule applies to portable furnaces, but this may not be everywhere so. An ordinary stove, with a loose pipe running into the chimney, is not; while a range or grate set in brick-work is. Mantel-pieces so attached to the chimney as not to be removed without marring the plastering, go with the house; but, if merely resting on brackets, they may be taken away by the former owner without legal liability. I am inclined to believe that a deed of a house does not include the gas-fixtures therein, and it is generally understood, that, if a lessee puts in his own gas-fixtures, he may remove them when his lease expires. The pumps, sinks, etc., fastened to the building, are a part of it in law, and so are the water-pipes connected therewith bringing water from a distant spring. A wooden cistern in the cellar, standing on blocks of wood, probably falls within the same rule. If the farmer has iron kettles set in brick-work, near his barn, for cooking food for his stock, or other similar uses, the deed of his farm covers them also, as likewise a bell attached to his barn, to call his men to dinner. A cider-mill goes with the apple-orchard, and not with last years' crop of apples. If he has a cattle-barn on the premises, the tie-up planks, stanchion-timbers, tie-chains, and hinge-hooks used for fastening the animals in their stalls, belong to the barn, and not to the cattle. If the farmer indulges in ornamental statues, vases, etc., permanently erected, and resting on the ground by their own weight merely, and sells his estate without reservation, these things

4 E. D. Smith, 275.
75 Ill. 385.
141 Mass. 557.
39 Conn. 362.
127 Mass. 125.
24 Wend. 191.
7 Mass. 432.
33 N. H. 104.
2 B. & C. 76.
102 Mass. 517.
127 Mass. 125.
79 Penn. St. 403.
10 Rich. 135.
40 Mo. 91.
108 Mass. 193.
1 Duer, 363.
99 Mass. 457.
97 Mass. 133.
40 Me. 310.
19 Pick. 314.
102 Mass. 514.
36 Conn. 86.
41 N. H. 504.

12 N. Y. 170. go with the land. But even this might not be so, if the article had just arrived, and never been placed
17 N. H. 282. or fitted to its position on the lawn.

The same rules apply to mortgages of a farm as to absolute deeds of it; with one additional important consideration, viz., any additions or permanent improvements upon the land after the mortgage is given, belong to the land, and go with it, so that if the farmer, after mortgaging his farm, erects a new barn, or other out-buildings, but fails to pay the mortgage debt, and the mortgagee forecloses, the owner will lose the whole, new and old, though it be twice the value of the whole mortgage debt.

CHAPTER IV.

HIRING HELP.

After taking possession of the farm, one of the first, and often one of the most trying duties of the farmer is to hire his help. Every employer of labor knows full well, that if a man is hired without any special bargain as to the price, he is entitled to the current rate of wages for such labor, and no more; but every laborer may not be aware that if he engages to work "for a year," but leaves without good cause at the end of eleven months, he is not, in most states, legally entitled to any compensation for what he has done, but forfeits the whole. Some states however, New Hampshire and Kansas for instance, allow the laborer to recover a fair price for his labor in such cases, deducting any damages he may have caused his employer, by not working out his full time. This view has a strong smack of justice in it, though it does not yet seem to have been very generally adopted. But the rule first stated generally prevails, whether the laborer has agreed to stay for the entire year at one round sum, or for a year at the rate of twenty dollars a month; although, if the farmer had paid for each month's work as it came due, he could not probably recover it back, even if the laborer afterward wrongfully left him before his time was out. And, if he has given a note for the amount already earned, he must pay the note, notwithstanding the subsequent failure of the other party to work out his full time. But if nothing has

2 Pick. 287.
6 Vt. 35.
8 Cow. 63.
34 Me. 102.
34 Mo. 79.
19 Pick. 528.
19 Vt. 503.
39 Wisc. 553.
6 N. H. 481.
21 Kans. 99.
Nebr.
8 Iowa, 106.
18 Iowa, 66.

12 Met. 286.
19 Johns. 337.

17 Vt. 355.
1 Cush. 279.

13 Johns. 53.
29 N. Y. 375.

been paid, and no note given, the laborer would not only forfeit his wages, but also would be liable to pay the employer for any damage done him by leaving him without help at a critical time in the year; therefore, if he has agreed to work a year for twenty dollars a month, and quits just before haying because he can get forty dollars at mowing for some one else and the farmer has to pay that price to get another man to supply his place, he can recover of the laborer the extra twenty dollars a month for the balance of the unexpired engagement, as damages caused him by such breaking of the contract; and the laborer could not set off against the claim of the employer the value of the work he had really done, and not been paid for. And this is so, whatever specific thing you hire a man to do. If he engages to build you a barn for five hundred dollars, to lay up a hundred feet of stone wall for a dollar a foot, or dig a well twenty feet deep for twenty-five dollars, and voluntarily quits without good excuse when the job is half done, you are not obliged to pay a single cent for what he did do; although, if he had substantially completed it in good faith, he would not lose all his labor because, in some minute particulars, he had not finished it exactly according to the precise terms of the contract.

4 Wend. 605.
12 Johns. 165.
13 Johns. 94.
2 Mass. 147.
11 Gray, 396.
7 Pick. 181.
9 Allen, 355.
20 Conn. 312.

If a farm laborer so conducts himself as to justify his discharge before his time has expired, it may be he would not forfeit all his wages (as when he voluntarily quits without cause), but might recover whatever his services were really worth to the farmer.

On the other hand, if the laborer has good cause for leaving, he may do so, and compel the employer to pay for the time he actually did work. And among the well-known excuses for leaving before

31 Vt. 162.

the original bargain is completed, are sickness of the hired man, or his physical inability to labor, or the prevalence of some dangerous epidemic in the family or in the vicinity, which might render it hazardous for the man to remain; such as cholera, small-pox, and the like. Any improper treatment by the employer, as scarcity of suitable food, is also deemed sufficient excuse for seeking other quarters.

11 Met. 440. 25 Conn. 188. 22 Me. 531. 20 N. Y. 197. 21 Wisc. 395. 11 Vt. 557. 43 Me. 463.

And even though the laborer so misbehaves himself that he is arrested and imprisoned for some crime, and so is busy picking oakum for the county in the house of correction, this is considered a legal excuse for not attending to his farm duties, and he can make the farmer pay for what he did do before he involuntarily went into the public service.

11 Allen, 201.

It has been thought that merely harsh language by the employer to his employee would not justify him in leaving before his stipulated time was out. In one instance the farmer asked his hired man to water and feed the cattle one Sunday morning. The man said he wouldn't do it: the employer told him to "go to hell, but to mind and work his time out first." Instead of following the directions, the laborer went to a lawyer's office (which some people think about the same thing), and sued for his wages up to that time, but was held not entitled to anything. Had the master required him to do any unnecessary or unlawful work on a Sunday, it would probably have been a good excuse for his leaving; but necessary farm-work, such as care of live animals, may undoubtedly be required on Sunday. And any work done on Sundays, ordinarily comes under the regular contract, and not as extra work.

27 Vt. 645. 1 Wend. 515. 81 Me. 356. 8 Conn. 14. 1 Browne, 29. 6 Dana. 1256. 4 Kans. 138.

Difficulty with another laborer is not a good excuse for leaving without permission; but it is always a question for the jury to decide whether the man

19 Vt. 503.

14 Gray, 454. has good cause for leaving, and their sympathies being with the person employed, they usually think the laborer is worthy of his hire. The cheaper way generally in such cases is, if the amount is not large, to pay the man, let him go, and never hire him again.

What we have before stated about a forfeiture of wages, is founded upon the doctrine that the laborer has made an entire contract for a time not exceeding one year, and that he must faithfully fulfill it, or he is entitled to no pay; therefore, if for any reason this entire contract is not valid and binding on the laborer, he may disregard it entirely, and quit when he likes, and still recover for all the time he did work. For this reason, if the bargain is to work for more than one year, or even for just a year, but to commence at some future day, as a week after making the bargain, and the contract is not written down and signed (which nobody ever thinks of doing), it

5 Gray, 41.
16 Conn. 246.
3 Hill, 128.
27 Ala. 187.

is not binding on the laborer, and he can break it from a mere whim, and still make the farmer pay for the time he did work. In like manner, if the la-

2 Pick. 332.
19 Pick. 572.
17 Me. 38.
18 Conn. 337.
25 N. H. 82.
3 Denio. 375.
58 Me. 217.
37 Vt. 647.
41 N. H. 346.

borer is under twenty-one, he is not bound by his bargain, but may desert when he pleases, and recover "back pay." And this is so, although the young man appears to be of age, or is married and has a family, or even though he falsely stated he was over age, and able and willing to make as good a bargain as if half a century old.

11 Cush. 40.
10 N. H. 184.
14 Vt. 447.
12 S. & R. 399.

Laborers sometimes make a contract that if either party is dissatisfied, the contract may be terminated. Under such circumstances, he may leave when he pleases, whether he had any good reason to be dissatisfied or not.

29 Vt. 219.
35 Vt. 297.

But even if you have a nominal remedy against a laborer who has left you unjustifiably in the midst of his contract, this so often proves practically worth-

less, that the law also gives you a right of redress against the person who has enticed him away with the offer of better wages, or otherwise. Of course one farmer has a right to offer inducements to a laborer to leave his present employer, when his time is out, or if he is only employed from day to day, and under no legal obligation to remain longer, but enticing him away during his contract for a stated period is quite another matter.

4 Pick. 425.
31 N. H. 49.

The law does not allow one man thus to interfere with another man's business without being liable to pay for all the inconvenience and loss he may thereby cause to the person whose men are thus induced to break their contract with their former employer.

107 Mass. 555.
56 N. H. 456.

It is for this reason that combinations among workmen for a strike, and to induce fellow workmen, by intimidation or otherwise, to forsake their employers, are clearly illegal, and render the parties involved liable both civilly and criminally. Such associations are more common among operatives than farm laborers; but probably the same rules apply to both.

15 Barb. 499.
7 Cow. 445.
106 Mass. 1.
3 Pitt. sb. 143.

A few years since, in Nebraska, a number of laborers conspired together to quit work simultaneously, and return the articles they were at work upon, in an unfinished and worthless condition. They did so, but they were obliged to pay several hundred dollars damages to their employer.

9 Neb. 390.

CHAPTER V.

RIGHTS IN THE ROAD.

143 Mass. 9.
2 Wall. 68.
34 Vt. 289.
37 N. Y. 251.
Mass. 65.
. I. 404.

If a farm deed is bounded by, on, or upon a road, it usually extends to the middle of the roadway. There are a few exceptional cases; but ordinarily the farmer owns the soil of half the road, and may use the grass, trees, stones, gravel, sand, or any thing of value to him, either on the land, or beneath the surface, subject only to the superior rights of the public to travel over the road, and that of the highway surveyor, or other similar officer, to use such materials for the repair of the road; and these materials the surveyor may cart away, and use elsewhere on the road, but he has no right to use them for his own private purposes. No other man has a right to feed his cattle on your half of the road, or cut the grass or trees; much less deposit his wood, old carts, wagons, or other things thereon; and after notice to the owner, the farmer may remove them to some suitable place, and if they are lost or injured it is not his fault.

1 N. H. 16.
125 Mass. 216.
43 Me. 322.
38 Conn. 50.
44 Vt. 49.
1 Cow. 238.
8 Met. 576.
9 Allen, 473.
1 Penn.St.336.

12 Met. 53.

The owner of the drove of cattle which stops to feed in front of your land, or of a drove of pigs which root up the soil, is responsible to you at law as much as if they did the same things inside the fence. No person's children have a legal right to pick up the apples under your trees, although the same stand wholly outside of the fence. No private person has a right to cut or lop off the limbs of your

16 Mass. 33.

trees in order to move his old barn or other buildings along the highway; and even if the owner of the building has a license from the proper authorities to move the same through the streets, this does not exempt him from liability to private sufferers. And no traveler can hitch his horse to your trees in the sidewalk, without being liable, if he gnaws the bark or otherwise injures them; and you may untie the horse, and remove him to some safe place. If your well is partly on your land, and partly outside the fence, no neighbor can use it, except by your permission. Nay, more; no man has a right to stand in front of your land, and whittle or deface your fence, throw stones at your dog, or insult you with abusive language, without being liable to you for trespassing on your land; he has a right to pass and repass in an orderly and becoming manner,—a right to use the road, but not to abuse it.

4 Cush. 437. 97 Mass. 472.

34 Me. 460.

11 Barb. 390

One judge thought that if a strolling musician stops in front of a house, and plays a tune, or sings an obscene song under the window, he would be liable as a trespasser on the road. It ought to be so, anyway. In one case, a man stopped in the highway, in front of a house, and used vulgar, obscene and profane langnage in the hearing of the inmates of the house, and it was decided that the man of the house had a right to put a stop to such annoyance, even by the use of force.

11 Barb. 398

80 N. C. 351.

Perhaps it may be well to state here, that, if the highway becomes suddenly impassable by heavy snows or deep gullies, a traveler may turn aside into your adjoining land, without being liable as a trespasser, if he does no unnecessary injury. But, notwithstanding the farmer owns the soil of the road, even *he* cannot use it for any purpose which interferes with the use of it by the public for travel. He

7 Cush. 408. 26 Q. B. of Ontario, 65.

cannot put his pig-pen, wagons, wood, or other things there, if the highway surveyor orders them away, as obstructing public travel. If he leaves such things outside his fence, and within the limits of the highway as actually laid out (even though some distance from the traveled path), and a traveler runs into them in the night, and is injured, the
Conn. 225. owner is not only liable to him for private damages, but may also be indicted and fined for obstructing a public way. And, if he have a fence or wall along the highway, he must place it all on his own land, and not half on the road, as in case of division fences between neighbors. And such front fence must end on each man's own line. One man has not
4 Gray, 215. a right to put the terminal post of his front fence partly on his neighbor's land, the same being no part
1 Lans. 79. of a division fence. But, as he owns the soil, if the road is discontinued, or located elsewhere, the land reverts to him, and he may enclose it to the center, and use it as a part of his farm.

As to shade and ornamental trees standing in the highway, the power and control over them is now by statute largely vested in the authorities of the town or city; and it would not be safe for the farmer to remove or trim them without permission from the proper authority.

CHAPTER VI.

WAYS OVER THE FARM.

OTHERS may acquire a right of way over your farm, in either one of three modes:

1. By purchase or grant from you.
2. By long-continued use, or prescription.
3. By actual necessity.

As to the first method, to gain a permanent right by purchase or grant, it must have been by a regular and complete deed, executed in the same way as a deed of the land itself. If the bargain was only oral, or even if it was in some simple written paper, but not in a formal deed under seal, it would, even though fully paid for, be in law revocable, — a mere license as it is called, — and might be terminated, at the mere wish of the land-owner, by a notice to the other party to use it no longer. Being a kind of interest in land, the strict law requires it to be conveyed by a deed.

2 Gray, 302.
2 Allen, 578.
4 R. I. 47.
35 Barb. 162.
38 Me. 257.
3 Dutch. 571.

2. The second mode, by prescription, requires length of time, — generally twenty years, but in some states, only fifteen; and the way must have been used continuously, peaceably, and under a claim of right to do so, and not by your permission or consent. If it was only very rarely used, if it was not peaceably used, but against your protest, or if used by your tacit consent, the use would not ripen into a legal right, however long continued. And, if used under all those conditions, it must have

8 Gray, 441.
11 Gray, 148.

been in some regular and uniform place. No man can gain a right by such means to wander over your farm just where he has a mind to, or where his convenience suits him. That would be an intolerable burden to the farmer.

5 Pick. 485.
44 Vt. 166.

To gain this right by twenty years' use, it is not necessary that any one owner should have traveled it twenty years. If successive owners have unitedly used it for that period, it would be sufficient, so far as length of time is concerned. And if this prescriptive right of way was gained only by using it for some particular purpose, as for carting wood from a wood-lot beyond, that would not authorize the person to continue to use it for all purposes, after the wood had been all cut off, and the lot covered over with buildings.

2 Allen, 543.
65 N. Y. 145.
19 Vt. 164.
3 Day, 258.
31 Conn. 531.

11 Gray, 150.
15 Gray, 387.
1 Ch. Div. 362.

3. The third mode, by necessity, arises when you sell a man a back lot, with no means for him to get to any highway except over your remaining land. The law gives him a right to cross your land to and fro; otherwise, his land would be useless. At present he can't reach it by balloon to any practicable purpose, and therefore he must cross your land. So, if you sell a man all your front land, retaining the back part, and have no way out except over the part sold, you retain a right to cross the lot sold, though your deed in such case says nothing about it; and this is so, even if in your deed you warrant the land to be free and clear from all incumbrances. It is a familiar maxim that "necessity knows no law."

22 N. Y. 217.
27 N. H. 448.
23 Penn. St. 233.
19 Wend. 507.
4 Bush, 317.

56 N. H. 306.
27 Cal. 366.
6 Cush. 132.
4 Gray, 297.

But right of ways by necessity continue only so long as the necessity itself continues; and if a highway is afterward laid out, touching the back land on the other side, or if the owner of such back lot afterward buys a lot adjoining it, and between it and a highway, he can no longer cross over your land as

before, but must go out the other way. And so long as he does have such a right, he must go in such a place as you designate, if it be a reasonable place. If you mark out a road or a way along the fence, or on the poorer ground, he should confine himself to that. If you neglect to do so, probably he may then locate his own way, but must do so in a "reasonable manner," and where it will do you no unnecessary damage. He has not a right always to take the "shortest cut" across your land, whatever it may be. Neither has he the right to keep changing his route, and so cut your land all up with his wheel-ruts. And, if the way becomes miry or out of repair, he must keep it in good condition if he wants to use it. Your duty is done when you allow him to cross; you are not obliged to smooth his pathway for him, and rake out the sticks and stones. But if you actually obstruct his usual road, and perhaps if it becomes suddenly impassable by natural causes, he would have a right to deviate to one side until he has opportunity to remove the obstructions or make repairs.

113 Mass. 489.
14 Gray, 126.
18 Conn. 321.
47 N. H. 230.
29 Tex. 78.
2 Pick. 378.
12 Mass. 69.
75 N. Y. 474.
8 Pick. 339.
2 Allen, 546.

All such rights of way are apt to be nuisances to the farmer, and not unfrequently lead to litigation.

It is important to know, that, in whatever mode a right of way is acquired over your land, you have ordinarily a right, in the absence of any stipulation to the contrary, to erect suitable gates or bars at the entrances thereto from the highway; and if the other party leave them open, and cattle get in, or yours get out, he is liable to you for the damage which ensues.

9 B. Monr. 21.
22 Iowa, 161.
44 N. H. 539.
31 N. Y. 366.
4 Lans. 64.
47 N. H. 301.
45 Md. 357.

CHAPTER VII.

RAILROADS THROUGH FARMS.

MANY farms, now-a-days, especially in the valleys, have one or more railroads crossing them; and as such roads are not generally acceptable to the farmer, it becomes interesting to know the legal liabilities and rights of the company and the land owner.

In the first place, railroad companies do not generally acquire the fee in any land they take by law for their road-bed, but only an easement, or right to maintain their road there, with all necessary incidental rights thereto. If the farmer gives the company a deed of the land, of course they have the same absolute ownership as any other purchaser would have. And in some states this may be so when the land is seized and condemned by the railroad company, contrary to the will of the owner; but usually the fee of the land remains in the person from whom it was taken. The exclusive rights of property in the land, and in the trees and herbage upon its surface, and the minerals below it, belongs to him, and the company have only a right of way over the surface.

40 Vt. 81.
12 N. Y. 121.

34 N. H. 282.
28 Vt. 387.
39 N. H. 564.
11 Iowa, 15.
42 Ala. (N.S.), 83.

If any stranger, therefore, should take and carry away any such things from the strip of land taken for the road, he would be liable to the adjacent land owner for so doing. But owing to the peculiar character of railways, and the necessity for an exclusive

use and occupation of the road by the company, the land owner might not have, as against the company, a right to enter *ad libitum*, and cut and carry away what was growing thereon, or remove the soil, turf, etc.

42 Vt. 265.
32 Vt. 43.
2 Gray, 574.

And of course the company have a right to cut down, and remove, any trees, buildings, or other objects within their authorized location, which may at any time interfere with their use and operation of the road.

10 Cush. 6.

It may seem singular that a railroad company, a corporation organized only for private profit, should have a legal right to take the best of a man's land without his consent, and subject him to the annoyances necessarily incident to such a use of his property; but it is quite universally established that the legislature have a right to grant railroad companies such powers, mainly because, though the direct object of the stockholders in building a railroad is pecuniary profit, yet being built, it becomes a great public highway—artificial highway—on which every one has a right to travel, upon complying with the terms and conditions sanctioned by the law. Being, however, a power contrary to common right, it is to be strictly construed, and not extended beyond the necessity of the case; and railroad companies do not have a right to seize and take all the land they may happen to want, but only what they actually need for operating their road. They would have no right to seize and take possession of land wholly outside of their location, merely for the purpose of speculation and profit.

Redfield on Railways, vol. I, chap. XI.

In some states, also, the land lawfully taken must be actually paid for, before the company has any right to even take possession: while in others, they have a right of immediate possession, leaving the

damages to be paid for afterward, as the parties may agree, or a legal tribunal determine.

The ultimate fee of the road-bed therefore, generally remaining in the former owner, if the road is discontinued, or the location entirely changed and abandoned, all land taken by law reverts to the former owner, and he may re-occupy the same. And as the fee is all the time in him, if he sell a part of his farm, on one side of a railroad, and bounds it by the road, the grantee acquires a right in the fee to the center of the road, as in cases of deeds along highways, etc.

Such being the respective interests of land owner and railroad company in the bed of the road, the next question is, as to the fences along this narrow belt of land. Obviously, the fences ought to be erected and maintained by the railroad company, or the land owner ought to be compensated for the expense of doing so himself. Accordingly, as the more simple mode of settling the question, it is now generally provided by statute, that railroad companies shall do all the fencing, on both sides, and ever afterward maintain them. And where that is so, the company is liable for any injury to the adjoining owner's cattle or beasts which stray on to the road, through a defective fence, and are there killed or injured by passing trains, whether there is, or is not, any negligence in running the trains.

Redfield on Railways, vol. I, ch. XVIII. 8 Barb. 358, 390 35 N. H., 169, 356. 5 Ind. 111.

But where there is no positive law requiring the company to fence, the duty of keeping one's animals off the road is on the owner of the animals, and if they stray upon the road, and are injured, the company is not liable unless guilty of negligence in running the train.

Redfield on Railways, v. I, chaps. XVIII XIX.

And even where the law actually requires the railroad company to keep up the fences, that applies only

to cattle belonging to the adjoining owners, or lawfully on their lands, by their permission. It does not apply to cattle of third persons remotely situated, that have strayed away, and wandered on to the railroad, and are then killed. In such cases the company is not responsible for any defects in their own fence, but only in case they have negligently run down the beasts. Redfield, supra. 98 Mass. 560.

These are the general principles applicable to this subject, but it is so much controlled by local statutes and decisions, that it would be impracticable and confusion to discuss it further here.

Another important question arising about railroads, is their liability for fires, communicated by their passing locomotives to the woods, pastures, or buildings of farmers along the route. Primarily, a railroad company is not liable for fires, unless caused by some negligence or carelessnesss of their employes. Formerly, and antecedently to any statutes, railroad companies were not liable for fires caused by their locomotives, without proof of some negligence, either in the construction or mode of running the engine, by which the fire was caused, or otherwise. But as the liability to such fires was so great, and the amount of damage so caused was very extensive, it became necessary to enlarge their liability; and now in some states, by statute, railroad corporations are liable for all damages to the buildings or personal property of land-owners along their route, arising from fire communicated by their locomotives, and without any proof of negligence or carelessness, either in the company or any of its employes. This seems to be the law in Massachusetts.

5 H. & N. 674.
18 Barb. 80.
30 Iowa, 420.
15 Conn. 124.
37 Me. 93.
31 Ind. 143.
33 Iowa, 187.
60 Mo. 227.
4 Neb. 268.

6 Allen, 87.
8 Allen, 423.
121 Mass. 134.

And this statute has a very liberal construction, extending not only to buildings immediately adjoining the railroads, and which are fired directly by

sparks from the locomotives, but also to buildings at a long distance from the road, and which are set on fire by sparks flying through the air from some building nearer by, which had first taken fire from the engine.

13 Met. 99.
98 Mass. 414.
103 Mass. 586.

As a protection to themselves, however, railroad companies are authorized to get the property along the route insured for their benefit; so that, if obliged to pay, they may remunerate themselves, and thus the burden is more equally divided. Different states may have different statutes upon this subject.

CHAPTER VIII.

AS TO FARM FENCES.

It was a fundamental principle of our law (though the contrary exists in many of the United States), that every man must keep his cattle on his own land at his peril. He was liable if they strayed away into other people's grounds. It was necessary, therefore, at common law, that every man should keep a personal watch over his animals, or surround his land with a fence. This fence was primarily, therefore, not to keep other people's cattle out, but to keep one's own in; and so any landowner, if he kept cattle, was bound to erect the entire fence around his close, whether his neighbor kept any cattle or not; and, if the latter also owned any, he must do the same, or keep his beasts at home in some other way. This was the law in Massachusetts, Maine, Vermont, New Hampshire, New York, Maryland, Minnesota, Indiana, Michigan; while Connecticut, Pennsylvania, Ohio, Iowa, Kansas, West Virginia, California, and some others, adopt the other rule, that the man who cultivates his land must keep other people's cattle off. And statutes sometimes so declare.

6 Mass. 94.
29 Me. 282.
44 Vt. 268.
4 N. H. 36.
1 Cow. 78.
11 Md. 340.
15 Minn. 350.
14 Ind. 317.
3 Mich. 163.
14 Conn. 295.
68 Penn. St. 35.
3 Ohio St. 179.
2 Iowa, 288.
7 Kansas, 592.
17 Cal. 308.
7 Jones (N.C.) 468
10 Rich. (S.C.) 227.
42 Geo. 305.
22 Tex. 355.
55 Mo. 580.
31 Miss. 152.

But two parallel fences would be attended with useless expense; and, as one and the same fence would answer for two adjoining proprietors, it was long ago provided by statute law, in many states, that adjoining owners of improved lands should maintain partition fences in equal shares; and, if

they did not agree how the fence should be divided, either might apply to the fence viewers, elected by the town every year, to decide which part each pro-
Pub. Sts. c. 36. prietor should keep up. And if, after such decision, either party refused or neglected to build or keep in repair his portion, the other could do so, and recover double the expenses of the delinquent owner by a suit at law. It follows, therefore, that if my adjoining owner does not keep up his half of the fence, and my cattle get through and injure his crops, he has no redress against me, since his own neglect was, in part at least, the cause of his injury. But now comes in a very important addition to this rule; and this is, if my cattle stray beyond the immediately adjoining land, into the farm of a third person, and there injure his crops, I am liable for the damage to him, although my own half of my fence is good, and my animals escaped through my immediate neighbor's defective fence; because as to all persons except my nearest neighbor, I am still bound to keep my cattle on my own land; and it is no excuse for me, so far as third persons are concerned, that my neighbor neglected his half of our divison fence. Whether my neighbor would be liable to refund to me what I had to pay to such distant owner, is not yet settled; but it is established that the latter could not himself sue the negligent land-owner, but only the owner of the
11 Gray, 489. cattle. Nay, so far is this rule carried, that although such third person did not keep up his own fence, and the cattle go into his land through his own fault, he can still make me pay the damages; because he is not bound in law to keep up any fence at all, except as against his nearest neighbor, and not against my cattle further off. In other words, if A, B and C own three adjoining lots, and A's cattle stray into B's land through B's neglect, he has no remedy

against A; but if they stray still further, on the land of C also, and there do mischief, C has a claim for the damages against A, even though the animals went through his own broken-down fence. A must keep his animals at home at his own peril. So if your vicious bull escapes from your pasture, solely through a defect in the fence which your neighbor was bound to keep up, and after roaming over his lot, finds his way into other lands, still further away, and there injures man or beast, you are responsible, though you did not know the fence was down. 105 Mass. 71.

For similar reasons, if A turns his cattle into the highway and they come on to your land from the road, either because your front fence is defective or altogether gone, you have a remedy against A for all the damages you sustain; for you are not obliged to have any fence on the road, except to keep your own cattle in, and A must keep his own cattle at home. And so stringent is this rule, that if other people, in roaming over your grounds, hunting, fishing, or berrying, leave your bars down, by which your cattle escape into the highway, and thence come into my cornfield, you are responsible to me for all the damage, although not actually in fault, if you kept all your fences up. On the other hand, if you are carefully driving your cattle along the highway, and without your fault they break away from your control, and run into my adjoining land, and you drive them out as soon as you reasonably can, you are not responsible for the damage done; for you had a right to drive them along the highway, with proper care and attention; while in the other case they were not lawfully in the highway at all, although the owner was not personally at fault.

3 Wend. 142. 19 Johns. 385. 17 Am. Dec. 444.

30 N. H. 143.

114 Mass. 466. 13 Me. 250. 31 Penn. St. 525. 64 Ill. 307.

The proper legal height of all division fences in Massachusetts, Maine, and some other states, is four

feet; and they may be made of rails, timber, boards, or stone. A brook, river, pond, ditch, or hedge, may also be sufficient, or any other things which the fence-viewers consider equivalent to a four-foot rail-fence. The number of rails is not prescribed by law. But do not think because you have a good rail-fence, four feet high, and well kept up, that therefore you have done your whole duty in keeping your animals at home; for if your greedy cow pokes her head between the rails, and lops off your neighbor's corn or cabbages, you are as much bound to pay for the damage as if you had driven her clear in and told her to eat her fill.

L. R. 10 C. P. 10.

Neither think your responsibility is always confined to damage done *by your cattle*. If one's cattle are injured by your negligent fence you may be responsible to the owner. A few years ago two farmers had a wire fence between them, now so common in some parts of the country. One allowed his end of the fence to get rusty, and fall over into the grass, and gradually it broke up into short pieces; the other's cow, feeding in the tall grass, accidently swallowed one of these bits of wire, and a post mortem examination soon became necessary. The coroner's inquest decided that the cow must be paid for.

L. R. 3 C. P. Div. 254.

If that is good law—and I suppose it is—your wife or maid-servant should be careful where she throws her old hoop-skirt, lest some unlucky cow gets hold of it while browsing on the grass and vines that have run over and concealed it. This illustration owes its origin to that prince of humorous legal writers, Mr. Browne, editor of the Albany Law Journal.

18 Barb. 397. 1 Lans. 79. 48 Mo. 380.

These division fences may usually be placed one-half on each side of the line, even though ditches be used three feet wide; and both owners have a com-

2 Met. 180.

mon interest in the whole fence; and they must be kept in good repair throughout the entire year, unless both parties otherwise agree. But the duty of maintaining partition fences by statute, exists in Massachusetts only when both parties improve their lands. It would not be just to make a man, whose lands are wild, or not improved, and on which he neither has cattle to stray away and injure others, or growing crops which can be injured by other people's animals, to pay the expense of building or maintaining a fence which can be of no advantage to him. Accordingly, if only one of the adjoining owners improves his land, he has no right to compel the other to pay any part of the expense of a fence (except in some states as to a house-lot of half an acre or less); and if he needs a fence to keep his own animals at home, or for any other purpose, he must build it himself. If, therefore, A owns a pasture-lot alongside of B's wood-lot, the latter is not bound by statute to help maintain a fence between them; but if A puts cattle into his pasture, he must keep them there as best he can, either by watching them, or, if he thinks it cheaper, by building a fence himself around his entire lot. So, if both are wood-lots, the owners are not obliged to erect a fence; but, if either allows his cattle to range the woods, he must take care they do not browse through his neighbor's woods, or he will be responsible.

Pub. Sts. ch. 36, 8.

98 Mass. 565.

In some states, if A, the owner of land which he has heretofore kept fenced, wishes to lay it common, he can do so by giving six months' notice of his intention to the occupants of the adjoining land, and then he will not be obliged to maintain a fence, so long as his land lies common and unimproved. The safer way always is to give this notice in writing. But he must not take away his fence adjoining any

R. S. Me. ch. 22, secs. 10, 13, 14.

improved land, without first giving the owner or occupant an opportunity to purchase it, and if they cannot agree upon the price, the fence-viewers will appraise it for them.

The sum of the whole matter is this: by our common and general law every man is bound to keep his own cattle on his own land at his peril. The duty of doing this by a fence is created wholly by statute, and a fence need not be made except where the statute clearly requires it. And when the law requires a man to erect a division fence, he has a right to such use and occupation of the adjoining land as is necessary to carry out that duty.

60 Barb. 45.
57 N. Y. 657.
28 Ala. 385.

What we have thus far said as to the joint expense of fences, relates only to partition fences between two farmers. As to fences along a railroad, the law is quite different. The law of Massachusetts requires the company when requested to maintain a suitable fence along the whole line, through woodland as well as improved land; and the farmer has no part of the expense to pay. This railroad fence need not be always four feet high, nor need it always be so close as the division fence between land-owners. It must be suitable merely, — suitable for the place where it is situated; and through the woods, or where there is little or no danger of animals straying on to the track, it might be quite light, and yet comply with the law. But if any cattle of the adjoining land-owner do escape through it on to the track, through its unsuitableness, and are there injured by a passing train, the company is responsible. But here, again, the same principle comes in which we have before stated, viz.: the company is not bound to fence out everybody's cattle, but only those of the land-owner immediately adjoining. If, therefore, the animals of one remote from the railroad break out or

98 Mass. 560.
Pub. Sts. Mass. c. 112, sec. 102.
105 Mass. 193.
119 Mass. 516.

1 Allen, 16.
14 Allen, 151.
35 Me. 422.

stray away from their pasture, and after wandering over the intermediate lands, finally find their way on to the railroad, and there meet their death, the railroad company is not absolutely liable; the owner should have kept his cattle on his own lot, and not allowed them to trespass on others' lands. In some states this may not be so. Of course, if the cattle were lawfully pasturing on the lands near the railroad, by permission of the land-owner, they would be protected in the same manner as his own animals are; but if, unlawfully straying in the highway, they are killed while crossing a railroad, the company is not bound to pay, unless guilty of actual negligence.

98 Mass. 560.
42 Vt. 375.
47 N. H. 391.
55 N. H. 552.

25 Vt. 150.
21 N. H. 363.
12 C. B. 160.

CHAPTER IX.

IMPOUNDING CATTLE.

CLOSELY connected with the subject of fences is that of impounding animals. If you find your neighbor's cattle in your cornfield, there are three courses you may pursue:

1. You may put the animals in the town pound.
2. You may sue the owner for damages.
3. You may quietly turn them into the highway, and say nothing.

Of these three the last is the easiest to be done, and the hardest to make up one's mind to do. We are directed in the good book to forgive our neighbor his trespasses, but my copy says nothing about forgiving his cattle their trespasses. If a man ever allows himself to violate the third commandment, he is tempted to use that outlet for his indignation, when he jumps up from the dinner-table in a hot day in July to drive his neighbor's breachy cattle for the seventh time out of his garden or cornfield. It might, perhaps, alleviate his sufferings to know, that, if they then stray away and are lost, it is not his fault, and the owner has no claim on him; and he may even mildly hasten their departing steps by the aid of a good-sized dog; and if the said dog, in the excitement of the moment, takes a bit out of the nose or ear of the trespassing cattle, its owner is not bound to supply another. In some states, however, you must, apparently, be careful how large and fierce

18 Pick. 227.
6 N. H. 213.
10 Vt. 71.
32 Penn. St. 58, 65.

23 Vt. 236.
9 Mich. 158.
18 Vt. 425.
13 Hun, 127.
66 Ill. 309.

a dog you "set on" to your neighbor's cattle, lest you also suffer. 6 Blackf. 258.

You may not always with impunity set your dog on your neighbor's cattle wrongfully straying on to your land. And if one of them is killed by the dog, you might be liable unless the jury were satisfied that what you did was merely in the reasonable and necessary defence of your property. 57 N. H. 606. 1 Harr. 142.

The second remedy of a suit at law is more peaceful, but slower, and more likely to benefit the lawyer than the farmer.

Impounding is the most summary, and generally the most effective, but it is surrounded with legal dangers; and a slight mistake is often fatal, and, like

> "Some muskets aimed at duck or plover,
> Bear wide, and kick their owners over."

The general outline of this remedy in Massachusetts is this: If any person actually finds any sheep, swine, horses, or neat-cattle doing damage in his land, he may drive them to the town pound, or some other suitable place, giving them sufficient food and water; or he may shut them up in his own yard for a reasonable time before driving to the pound, and in the meantime send a memorandum to the owner of the animals, stating the cause of impounding them, the amount of damage done by them, the charges for feeding, etc., in order that the owner may come and pay the damages, and take away the beasts. If he does not come, or if the party impounding prefers, he may, in the first instance, drive them to the pound, or send for a field driver (who is generally the last married man in town) and request him to impound them, sending a similar memorandum to the pound-keeper, and also a written notice of the fact to the owner of the ani-

mals, within twenty-four hours, containing a description of the beasts, and a statement of the time, place, and cause of impounding. Before the owner can release his animals, he must pay the damages and all the expense; and, if he decline to do so, they may be sold by public auction, and the balance of the proceeds above the expenses deposited with the town treasurer for the benefit of the owner. This remedy seems to be seldom resorted to in modern days; for, in most of the town pounds which we pass, we notice that the gate is entirely gone, or so dilapidated as to furnish very little security against the escape of animals confined therein; nevertheless, every town in Massachusetts and Maine is still liable to a fine of fifty dollars for not keeping one or more suitable pounds.

Mass Pub.Sts. chap. 36, sec. 20.

A recent law in Massachusetts has added one more very important protection against invading animals, making the owner of any sheep, goats, cattle, horses, swine, or fowls, liable to a fine of ten dollars if he wilfully allows them to enter another's orchard, garden, mowing-land, or other improved land, after being forbidden in writing, or by notice posted thereon. This statute extends to fowls, which the laws in regard to impounding did not.

Mass Pub.Sts. chap. 203, sec. 98.

CHAPTER X.

FARMER'S ANIMALS.

PASSING from the subject of cattle straying away, and doing damage on other people's grounds, we have next to consider how far the farmer is liable for their good behavior in the public streets, or even on his own premises. It is clear enough, that if a vicious horse by the city sidewalk suddenly nips a piece out of your coat-sleeve, as you are passing by, and his owner knew his habits, he is bound to pay the tailor's bill; whereas if he only frightens you, and makes you jump, you have no redress, for that is what the law calls *damnum absque injuria*. That is an innocent expression in itself; but, if you give an excited utterance to it, a by-stander might think you were indulging in forbidden language!

It may not be generally understood that if a man turns his animals loose into the public highway, and they there injure the person or property of another lawfully using the way, the owner is responsible for all damages they may do, whether he knew they had any dangerous disposition or not. He had no right to let his cattle run loose in the public highway. In one instance a farmer's old black sow was wallowing in the gutter by the side of the road, and frightened a horse and threw a young lady out of the carriage; the farmer was held liable, although he did not know the animal was at large. In another instance a man let his horse go out to feed in a public place where some very young children were playing, and some of

4 Allen, 444. 39 N. Y. 400. 15 Penn. St. 188.

55 Me. 538

them began to switch him, whereupon he turned and kicked one of them so that he died, and the owner
10 Cox, 102. was convicted of manslaughter. Had he known the animal was dangerous, it might have even been more serious with him, since, in the Mosaic law, it was declared that if the owner of an ox knew that it pushed with his horn, and did not keep it in, and it killed a man or woman, not only the ox, but also the
Exod. xxi. 29. owner, was put to death.

And now as to a farmer's liability for animals on
27 Conn. 404.
124 Mass. 49.
3 E. D. Smith, 574.
4 Dev. & Bat. 146.
4 Sneed, 468.
38 Wisc. 300.
37 Iowa, 613. his own premises. Every owner of a dangerous or vicious animal known to be such, is liable for all injury he may do to another, even though the latter is at the time trespassing on the former's premises. If, therefore, a man, while hunting through your woods on Sunday, is attacked and bitten by your savage dog, you must pay for the pound of flesh, although
17 Wend. 497. you did not set him on. You should have posted up the advice of St. Paul,—BEWARE OF DOGS. And in like manner, if a boy, while robbing an orchard, is tossed by a vicious bull into the boughs of the apple-tree overhead, the owner is as much liable in law to pay for the boy's torn trousers as if he had received the same salutation when boldly coming up the path in broad daylight, to call on the farmer's youngest daughter. In one instance a farmer, who was much annoyed by strolling fishermen, put a savage bull into the lot along the stream. On his neighbors remonstrating with him that he ought to give strangers notice what kind of an animal it was, he remarked, "the fellow would give them notice enough himself;" but, as his notice was rather too brief, the farmer had to pay five hundred dollars for
3 C. & P. 138. two broken ribs.

And if the owner of a vicious animal is liable for injuries to a trespasser, much more is he liable to one

who is lawfully walking through his grounds. Not long since, the proprietors of that beautiful "Congress Spring Park," at Saratoga, were ordered by the court to pay $6,500 to a young lady named Edgar, who, while enjoying a walk through the park, was attacked, and seriously injured by one of the animals kept there as part of the attractions of the place; and it was thought to be no excuse that the owners had posted up a conspicuous notice,—"BEWARE OF THE BUCK." And after a very elaborate argument, the Supreme Court of the United States at Washington refused to disturb the decision. What a *dear* creature that buck was, wasn't it, especially after such a verdict!

99 U.S.R. 645.

But this extreme and severe liability absolutely depends upon the fact whether the owner of the animal had any previous knowledge of the brute's warlike disposition. If so, the mere keeping of such an animal unconfined is itself, in law, deemed culpable negligence. If he did not know the fact, some other form of negligence is essential in order to make the owner of an animal liable for his conduct while on the owner's premises, or while lawfully in the highway under the care of a keeper. For this reason, if a man's horse runs away in the street, and injures some one, or breaks a carriage, the owner is not liable, unless he carelessly left him unhitched, or was guilty of some other negligence. The not uncommon opinion to the contrary is quite erroneous.

9 Q. B. 101.
15 M. & W. 563.
10 Cush. 509.
5 C. B. 622.
10 Irish, L. R. 424.

3 Allen, 565.
53 N. H 442.
56 Ill. 319.
24 La. Ann. 390.

As to ownership of a farmer's animals. These, like all other personal property, may usually be bought and sold by an oral bargain, and as all know, not even a bill of sale is necessary; but in many states, if the animal is over fifty dollars in value, a mere oral contract for its purchase is not binding in law unless it be actually delivered, or the price be paid, in whole or in part, or unless some note or

Mass. Pub. Sts. c. 78, sec. 5.

written memorandum of the sale be made; but the precise details of this statute cannot be fully stated in a treatise of this kind.

One caution may be necessary in buying animals; that is, be sure that the seller really owns them; for

8 Mass. 518. 59 Me. 111. 52 N. H. 158. 18 Vt. 390. 9 Allen, 171. 8 Cow. 238. 5 S. & R. 130. 5 Ohio, 203.

if a thief steals a horse, and sells him to you, and you pay your money for him, in good faith, the real owner may come and take him from you, without repaying what you have advanced. *Perhaps* he would be bound to pay a fair charge for your keeping him in the meantime, but even this is not certain.

106 Mass. 286.

Of course a farmer does not lose his right of ownership in his domestic animals, although they have strayed away, and been really given up as lost.

3 Park. C. C. 129.

And this is so as to animals which were originally wild, but which had been tamed or reclaimed. A farmer in New York state once tamed a flock of wild geese, and they wandered away on to a neighbor's pond, and he shot them, but he was held re-

10 Johns. 102.

sponsible for their value. On a similar principle, if a swarm of bees leave one of your hives and take to the woods, and you follow them, and mark the tree where they light and enter, your ownership of them still continues good as to all persons, unless it be the owner of the tree. No other bee-hunter, at any rate, has a right to capture and carry them away,

15 Wend. 550.

or even their honey. Bees belong, by nature, to the class of wild animals, so called; and wild bees in a tree ordinarily belong to the owner of the land where the tree is situated; therefore a third person who finds a tree in the woods containing a swarm of bees, and marks it with his initials, does not thereby acquire any ownership in the bees, even as to any other bee-hunter, who comes along afterward, and actually captures and carries them away. The lat-

16 R. I. 34.

ter could hold them as against the first finder,

though perhaps not when claimed by the owner of the tree. In cases of wild animals, possession is pre-eminently "nine points in the law."

7 Johns. 16.
1 Cow. 243.

The same is true of other wild animals. A hunter does not acquire any legal right or ownership in a wild animal by pursuing him with dogs and gun, not even if he has wounded him, and is pressing him so closely that his capture is almost certain. Any other hunter may "sail in" and take him first, and in law would have the better right. Perhaps, if the first hunter had caught him in his trap, from which he could not, in all probability, have escaped, the rule might be different. But wild animals, which are of any value, either for food, fur, or otherwise, when once reclaimed or tamed, are properly subjects of private property, and so long as they remain such, a man's right to them is fully protected by the law.

3 Binn. 546.
2 Dev. 162.
3 Caines, 175.
20 Johns. 75.
81 Ill. 403.
65 N. C. 315.

A few other points about your animals you might like to know.

You haven't a right to keep a large number of swine so near the highway, or so near your neighbor's house, that the odors of the piggery are really disagreeable, and a nuisance to the neighboring families, or to travellers on the highway; and a custom to do so would make no difference. Such things are a nuisance in law.

139 Mass. 201.

If your horse has the glanders it may be killed by order of the Cattle Commissioners without making you any compensation, but their decision is not conclusive against you. You may still go to the jury in a suit for the value of the horse, and if you prove the horse did not have the glanders, you can recover the value.

152 Mass. 540.

If you take other people's cattle to pasture for the season you are not liable for any injury to them, unless you were guilty of some neglect in taking care of them, which the owner must distinctly prove.

143 Mass. 453.

CHAPTER XI.

ABOUT DOGS.

THE question of liability for, and protection against, dogs has been a perplexing one from earliest times. The laws of Solon—undoubtedly the wisest law-giver of his age—declared, that, if any dog bit a person, he should be delivered up, and bound to a log of wood four cubits long; and the Romans also adopted the same law in their "Twelve Tables;" while an early law in Wales provided, that, after a dog had bitten three persons, he should be first tied to his master's leg, and then killed.

Owing to the naturally wild and fierce disposition of dogs, it has not been generally thought necessary by legislators, in order to make the owner liable, to prove that he actually knew the dog was accustomed to bite, as it is in the case of other domestic animals. The law presumes that the son of every Puritan farmer has been brought up from boyhood to repeat those lines of good old Dr. Watts:—

> "Let dogs delight to bark and bite,
> For God hath made them so."

3 Allen, 191.

Accordingly the owner is liable, if they do, whether his education on this point has been neglected or not. And not only so, he must, in both Massachusetts and Maine, pay double damages for the pleasure of keeping such animals; and, after actual notice of his disposition, the damages may be sometimes increased to threefold. And so compre-

Pub.Sts. Mass chap. 102, secs. 93 and 97.

hensive is this law that, if your dog rushes out into the street, and in mere play jumps at a horse's head, whereby he is frightened and runs away, breaking the carriage, and perhaps the limbs of the occupants, you are responsible for double the amount of the entire damage, though it amount to several thousand dollars; for the liability of the owner is not limited to damages from the *bite* of a dog, but extends to any direct injury, however caused. If the injury is caused by a dog's playfulness merely, as by jumping upon a child and throwing him to the ground, and cutting his face on the stones, the result is the same, the owner is equally liable. 148 Mass. 85.

Again, if your dog is at large, although he is a good-natured Newfoundland, and, being teased and irritated by young children at play, turns upon them, and bites one severely, you may be liable to heavy damages, although the dog was never known to bite before. 1 Allen, 191. 4 Allen, 431.

In a recent case in Massachusetts, a boy thirteen years old met a large dog weighing about one hundred pounds, and as the dog approached, the boy struck him with a stick about three feet long, and thereupon the dog snapped at him, and bit him on the leg; but the dog had to pay for it, because the jury thought the boy acted as most boys of his age would have done! If he had been thirty-one instead of thirteen years old, the dog might have come off victorious. 124 Mass. 57. 38 Wisc. 300. 65 Ill. 235.

The old notion was that every dog was entitled to one bite before his owner could be made liable; but this doctrine is now exploded, and in these days every bite counts one, large or small. And this is so, although the dog is duly licensed and collared. The object of the dog-tax was not to exempt the owner of a dog, when known, from his former liabil- L.R.2. C.P. 1. 65 N. Y. 54.

ity for all his dog's mischief, but to provide a fund for the remuneration of the farmer, when the owner was not known, or was not pecuniarily responsible. Accordingly, in Massachusetts, any man whose animals are injured by a dog, may now have either mode of redress,—he may file his claim with the selectmen, and take simply the amount of damages he may have sustained; or he may "go for" the owner of the dog, and get double damages, if he can: but he can-
2 Allen, 208. not try both methods. If he is paid his simple damage out of the dog-tax, the county may compel the owner of the guilty dog to refund the amount paid out. This choice of remedies, however, does not exist in Maine, for in that state he must look only to the keeper of the dog for redress. And if the keeper of the dog is not the owner, but merely harbors the
52 Me. 178. beast, he is liable for the damage done just the same.

The statute of Massachusetts (Pub. Sts. C. 102, § 93), not only makes the owner of a dog liable for his misdeeds, but the "keeper" also. What constitutes one a keeper is ordinarily a question of fact for
3 Allen, 101; 52 N. H. 368. the jury under all the circumstances of the case. But merely allowing another to keep a dog on one's premises for his own pleasure or company, does not
128 Mass. 218. in and of itself constitute one a "keeper" of such dog.

Therefore a farmer could hardly be held liable for the conduct of a dog which his hired man owned and brought on to his premises, merely because he
153 Mass. 349. did not forbid it, or drive the dog away. Neither is a wife liable as keeper of a dog owned by her husband, though kept on premises which she owns, and
152 Mass. 7. on which she carries on her own separate business.

You will observe that the Massachusetts statute says, that the owner *or* keeper may be liable, etc. It does not mean that both are. You cannot sue both in one suit, one as owner for owning, and one as

keeper for keeping. Nay more, if you sue one and get a judgment against him, you cannot afterwards sue the other, even though you cannot collect the damages of the first one because of his inability to pay. You must look carefully before you begin. Be sure you're right before you go ahead. If one is injured in his own person, his only remedy for remuneration is against the owner of the dog. The "dog-law" does not include injuries to man, but only to his domestic animals. Perhaps it should be extended in this respect.

154 Mass. 347.

But no man is obliged to wait until the mischief is done, and then seek redress by the law's delay. You may take the law into your own hands, and kill any dog, licensed or not, that suddenly assaults you while peaceably walking or riding in the public streets; and so you may if the dog is found out of the enclosure or care of the owner, wounding, worrying,, or killing any poultry, neat-cattle, sheep or lambs. So as to a dog which continually haunts your house, barking and howling day and night, disturbing the peace and quiet of your family. But you could not lawfully kill a neighbor's dog merely because he was peaceably walking over your grounds without leave.

13 Johns. 312.
21 Wend. 467.
26 Vt. 638.
31 Conn. 130.
9 John. 233.
4 Cow. 351.
52 Barb. 15.
141 Mass. 179.
23 Wend. 334.

If a dog is not licensed, or has no collar on, your right to kill him is much broader. The law of Massachusetts says you may kill him "whenever or wherever found." These are its exact words. But if you think this authorizes you to kill him on his owner's premises, and you should pursue him into his owner's house and there kill him, contrary to his master's wishes, you might find out your mistake by being compelled to pay, not only the full value of the dog, but also for unlawfully entering the owner's premises. "Whenever and wherever found," therefore, don't mean exactly what it says. Such are the quirks of the law.

133 Mass. 240.
11 Allen, 151.
109 Mass. 276.
15 Gray, 61.
4 Dev. & Batt. 146.

Again: do not think, that, because you can openly and publicly shoot an unlicensed dog which is hanging around your premises annoying your family, you can therefore *poison* him; for that kind of physic is not to be thrown even to dogs, and the mere exposing of any poison for that purpose, whether the dog touches it or not, may cost you fifty dollars and the costs of prosecution. And this is very moderate, considering, that, for the malicious poisoning of some other domestic animals,—even a sucking calf,—you may obtain, if you live in Massachusetts, a free residence in that well-known state institution at Charlestown for *five years*, or if you live in Maine you may be a guest at Thomaston for *four years*,—that is, unless you see fit to break out before that time! Thus much for the law of dogs. And the only crumb of consolation I can offer on this subject is this: if two dogs, yours and your neighbor's, go off on a joint raid on a flock of sheep, you are bound to pay only for those your dog killed, and not the others, if anybody can find out which was which; whereas, if the two owners of the dogs go out together to rob a melon-patch, one is liable for all the melons carried away, although the other ate them all; so that in one respect the law seems to favor the dogs. On the other hand, as a man is not liable for any sheep, fowls, or other things which his mischievous boys wantonly kill when coming home from an unsuccessful hunt, drunk or sober, in this respect again the law is rather against the dogs.

20 Pick. 477.
20 Barb. 479.
4 N. Y. 131.
2 Conn. 206.
2 Vt. 9.
9 Ind. 72.

10 Wend. 654.
1 Stark. 352.
18 Ohio, 1.
42 How. Pr. 399.

4 Denio, 175.
59 Ill. 51
37 Tex. 406.
24 Mo. 219.
17 Wisc. 230.
13 Kans. 348.

However useful dogs may be, it was a principle of the old common law of England, adopted in many American states, that a man could not have any ownership in a dog, and therefore if I should steal your dog (instead of one of your chickens), I could not be convicted of larceny for it. But in many states a more sensible rule exists, either by statute, or otherwise.

Bell C. C. 34.
8 S. & R. 571.
26 Ohio St. 400.
48 Ala. 161.

11 Kans. 480.
1 Parker, 593.
4 Parker, 386.

CHAPTER XII.

LIABILITY FOR HIS MEN.

THE liability of a farmer who employs many hands may prove extremely onerous at times. As a general rule, he is liable for all the injury they do while actually employed in his business; therefore if you send a boy to burn old brush, and the lad leaves his work to look after his partridge-snares or rabbit-boxes in the wood, and the fire runs into the next field, and consumes the crops or fence of your neighbor, you must pay the bill, although you told him to watch it carefully, and never leave it a minute. If you send a load of farm produce into town, and the driver falls into a doze and runs into another team, you must pay for the broken spokes. If your man, in going to or from the hayfield, carelessly swings his scythe, and cuts an ugly gash in the leg of a passer-by, you had better pay the doctor's bill, and be glad to get off thus easy. If, in cutting your wood, your man accidently cuts over the line, on your neighbor's lot, you are responsible, although you told the man where the line was. A short time since a man was driving his master's horse and wagon through Bromfield street, Boston, on his master's business, when the horse kicked off a hind-shoe, which struck a large plate-glass window in a store, and the owner of the animal had to buy another pane of glass. And though your man shows a touch of maliciousness in his act done in the prosecution of your business, and intentionally runs into another team which somewhat obstructs his way while driving your

5 Gilm. 500.
7 Cush. 385.

23 Mich. 298.
3 Sneed, 20.

126 Mass. 24.

load, you may not screen yourself behind his unnecessary and wilful violation of your orders. Of course, in all these cases, you could compel the servant to repay you all the expenses he had thus caused you by his misconduct. On the other hand, to make you responsible for his carelessness, he must have been *at the very time* on your business. If he borrows your horse and wagon, and goes off on pleasure, or business of his own, and runs over somebody, you are not responsible merely because it was your horse and wagon; much less would you be liable if your servant took your team without your knowledge on pleasure or business of his own.

12 Allen, 49.
114 Mass. 518.
109 Mass. 154.
63 Me. 177.
43 Conn. 244.
26 Penn. St. 482.
4 Daly, 338.
9 R. I. 262.

How it would be if the fellow was on his own business and yours too, is a nice question, which might puzzle even a "Philadelphia lawyer." In one instance a farmer lent his man his team to go to town for a holiday, and asked him to stop at the butcher's on his way home, and bring along a piece of meat for next day's dinner. While fulfilling this order, the man also took a little "fire-water," and soon after ran over an old woman in the public highway; but the master was considered not responsible. This was, however, in the courts of the Emerald Isle.

9 Irish L. R. 557.

One more distinction on this subject it may be well to state; and that is, that, although an employer is responsible for any careless injury his men may do to third persons, he is not responsible for such an injury to other fellow-workmen. If a hired man, therefore, by the very same act of negligence, injures a co-laborer and also a bystander, the latter would have redress against the master, and the other not; for, by a species of rather artificial reasoning, I think, a man, when hiring out, is supposed in law to have anticipated any direct injury from the carelessness of his co-laborers, and taken the risk on himself, what-

ever his rate of wages. But, on the other hand, he is not presumed to have contemplated any negligence on the part of his employer; and therefore he has a remedy against the latter for his own personal carelessness, or in providing dangerous or insufficient machinery or apparatus, or even in hiring notoriously incompetent or habitually careless men. In one instance an employer was compelled to pay two hundred dollars to his hired man, who fell into a barrel of hot water, set in the ground and carelessly left uncovered, but which the man did not know of. And this last rule would probably render the employer liable for any injury to his servants from dangerous or vicious animals intrusted to them to take care of; at least, if the owner knew of their character, and the man did not.

112 Mass. 234.

48 Me. 113. 29 Conn. 548. 8 N. Y. 175. 38 Ind. 294.

111 Mass. 322.

9 Exch. 223.

Statutes have been passed recently which change the common law liability of some employers for acts of their men, but it is expressly declared in the Employers' Liability Act of Massachusetts that the act shall not apply to injuries caused to domestic servants, or farm laborers, by other fellow-employees.

Acts of 1887, ch. 270, sec. 7.

But this whole subject is surrounded with subtle distinctions; and my best advice to you is, that, if you ever have such a case do not rely upon this article, nor upon any of those books called "Every Man his own Lawyer," but go and get the best legal counsel you can find.

CHAPTER XIII.

ABOUT FIRES.

If a careless hunter fires your woods, and, much to his consternation, the flames spread to your fields, and run along the fences to your barn, he is responsible for the whole loss, although he did his best to stay its progress. A man who wrongfully sets in operation a dangerous instrument, must take all the consequences directly caused thereby; and this would be so whether the fire ran along the ground continuously, or whether the sparks were blown through the air a considerable distance over intervening land, and then set fire to some person's property. But as any farmer has a legal right to burn the brush, old stumps, etc., on his own land, if he does so at proper times and in a proper manner, he is not responsible, if, by a sudden rise of wind or other cause, without negligence on his part, the fire is accidentally communicated to a neighbor's premises, and causes him serious injury. The gist of his liability (I believe the lawyers call it) in such cases is some carelessness, either in the time of setting the fire, or in the manner of doing so, or in watching it afterward; and the man who suffers is bound to make it clear that the other was to blame. But even your negligence will not always render you liable for the spread of a fire, unless it was originally kindled by you intentionally. Therefore, if your barn takes fire through your carelessness with the lantern, or that of your man with his pipe, and thereby your neighbor's

21 Pick. 378.
43 Cal. 437.
2 Harr. 443.

107 Mass. 494.

8 Wisc. 255.
4 Jones N. C. 323.

54 Me. 259.
22 Barb. 619.
44 Barb. 424.
13 Me. 32.
11 Met. 460.
25 N. Y. 544.
16 Mo. 508.

property is also consumed, you are not bound to pay for it; the law seems to consider that you have suffered enough for your conduct in the loss of your own property; although there is some difference of opinion about this.

1 Bl. Com. 321.
37 Barb. 15.
35 N. Y. 210.
62 Penn. St. 533.
49 N. Y. 420.

Still less would you be responsible if the fire originated from causes beyond your control. If your barn is struck by lightning, or your haystack ignites by spontaneous combustion, without any fault on your part, and the flames spread to the adjoining owner's property, it would be hard indeed if you had not only to lose your own, but to pay for his also. And I suppose, even if you were careless in not promptly and energetically putting it out when you could have done so, and it spreads beyond your control, this would not render you liable, as perhaps it might have done had you purposely set fire to your brush-heap or stubble.

8 Johns. 422.
11 Q. B. 347.

As to railroad fires the law is stated elsewhere.

CHAPTER XIV.

WATER RIGHTS AND DRAINAGE.

WATER is flowing and fleeting, and the rights of farmers therein are much of the same kind. If a stream of water flows through a farm, the owner has a right to use any reasonable quantity of it as it flows along, for watering his stock, irrigating his land, or supplying his house for domestic use. But he must not monopolize the whole; his neighbor's cattle must have water also. Perhaps if the stream be very small, and his own reasonable wants consume the whole of it, he might have a right to use the whole. He may, to some extent, change the course and flow of the brook on his own land, provided he turns it back into the natural channel before it reaches the land below him. He has no right to conduct it into his neighbor's land, without his consent, at a different point or place than where it naturally entered therein. He may build fish-ponds, or otherwise dam up the stream, provided he does not thereby flow back on the land above him. If he does so, he is ordinarily liable to a suit for trespass, and finally, if he continues it, to an injunction, except in Barnstable county, where a recent special law allows such ponds upon paying damages to the owner of the land flowed. A farmer generally acquires no right to flow another's land without his consent, as a mill-owner has; for the statutes giving such right, upon payment of a fair compensation, generally apply only to mill-dams, cranberry-dams, and the like; and, if your neighbor below you does so dam up the stream as to flow back

10 Cush. 189.
25 Conn. 331.
17 Barb. 654.
4 Ga. 241.

10 Mass. 74.
3 Denio, 306.
19 N. H. 471.
12 Cush. 454.
32 Vt. 426.
4 Kansas, 511.

154 Mass. 579.

Pub. Sts. c. 190, sec. 48.

on you, you may enter on his land, and take down enough of the obstruction to relieve your land of the overflow.

So, if a natural stream becomes obstructed by leaves, sticks and rubbish, or snow and ice, you have a right to go on to the land and remove the obstructions, so that the water will flow as freely as before; and the natural deposits you may place on the banks of the stream. The same rules prevail as to artificial water-courses or ditches, provided you have acquired a right to have a ditch running through another's lands. But you have not ordinarily such a right, unless you or your predecessors have purchased the privilege of him, or have enjoyed it so long and under such circumstances as to have thereby gained a prescriptive right, as it is called, or, lastly, have had the ditch opened by commissioners appointed by the court under the public statutes of Massachusetts. If your land is overflowed by back water from a town sewer which the town has neglected to keep free from obstructions, no doubt you can recover the damages from the town.

134 Mass. 624.

5 Met. 429.
21 Pick. 341.

3 Allen, 7.
12 Allen, 240, ch. 189.

151 Mass. 174.

The rights and liabilities of farmers in surface-water are very different in some states from those in flowing or running streams. By "surface-water" is meant, not only that which comes from falling rains and melting snows, but also that which oozes out of the ground from springs or marshy places, and which finds its way over the surface, or through the tussocks, but is not gathered into a bed or current like a brook or rivulet. When once collected into a stream, with a bed and banks, it loses its character as surface-water, and becomes subject to different rules; but, so long as it is only surface-water, any man on whose land it is has a right to detain and use the whole of it on his own land and for his own

purposes, and is not bound to let any portion of it flow on to the land below, unless he wishes. On the other hand, he may turn the whole of it on to the premises below him, whether grass-land or cultivated field, even though it be a serious injury to such neighbor, unless he collects it into a definite artificial channel, and makes it a stream, for then he would be liable. In Indiana, a short time ago, a farmer owning lands on the Ohio river, which were often subject to overflow, planted a row of trees on his own land, and along the division line between his farm and the proprietor above him, whereby, in times of great freshets, the drift-wood and rubbish, floating along, was deposited on the land of his neighbor, and caused him some considerable trouble and damage to remove it, but it was decided, after a very elaborate argument, that the upper proprietor had no redress.

120 Mass. 99.
5 R. I. 243.
29 N. Y. 467.
76 N. Y. 60.
12 Ohio St. 300.
64 Ind. 167.

If a farmer wishes to protect himself from mere surface water, he must build up some embankment at the edge of his land, and stop the flow, as he has a perfect right to do, although he thereby makes quite a pond above, and injures the crop there.

100 Mass. 181.
46 Cal. 346.
49 Ill. 484.
23 Mo. 181.
34 Conn. 466.
74 N. C. 767.
26 Penn. St. 407.

In the old Bay State, no action lies against the owner below you for backing surface water on to you, nor against the owner above for turning it on to you. *Damming* is the only remedy. Nor will any action at law or bill in equity lie against a town because by the ordinary flow of surface waters from the streets, with the usual impurities incident thereto, your brook is somewhat polluted and rendered less valuable. If you have any remedy at all, which is very doubtful, it is by petition under the statute.

153 Mass. 247.
154 Mass. 255.

And it makes no difference whether the surface water from the road *overflows* your land, or whether

having been collected in catch basins or gutters percolates thence through the soil into your cellar. 146 Mass. 467.

If a permanent alteration is made in the surface of the road, by water-bars, spouts, etc., as to constantly turn the road-water on to you, you may perhaps find some compensation against the town under the Pub. Sts. c. 52. sec. 15, but you could not bring a suit at law against the surveyor. 153 Mass. 247.

As to under-ground water, the law does not generally recognize any right of ownership therein; and consequently, if your neighbor's well is fed by springs or underground rills from your land, you may dig down on your land to any depth you please, even near to the line; and if, by chance, you cut off the supplies to his well, and leave it dry, he must bear it as well as he can. But you must be careful in digging not to dig so low as to cause his land to cave into your excavation, or you may be responsible therefor. This right to cut off one's well supply seems to be confined to land owners; for if your town in building a common sewer drains your well by cutting off the water percolating through the soil, you have a remedy against the town under Pub. Sts. c. 50, even though your well may not be adjoining the tract through which the sewer is laid. 144 Mass. 139.

18 Pick. 117. 62 Me. 175. 28 Vt. 49. 20 Conn. 533. 45 N. Y. 362. 25 Penn. St. 528. 14 Ind. 112. 11 Mass. 220. 122 Mass. 199. 27 Gratt. 77. 99 U. S. 635.

In connection with water rights may properly be considered the matter of

ICE.

If the mill owner below you has raised a pond on your land, on which valuable ice may be cut, neither he nor any other ice dealer has a right to maliciously draw down the pond and so destroy your ice crop, when about ready to harvest. 154 Mass. 414. 78 Me. 445.

You have the right to cut ice made over land which belongs to you. But you could not take ice enough 108 Mass. 160. 65 Mich. 341. 91 Ind. 134.

10 Cush. 186. 26 Hun. 246. 82 Ind. 568. 34 Conn. 462. to appreciably diminish the head of water, if such a result is possible. If the pond is a natural pond, entirely on your land, your right to the ice is clear, and so is your right to sell it to another who would have the sole right to it. But if the pond is a "great pond," i. e. a pond of more than ten acres in extent, your rights are not the same. By an early colonial ordinance, ownership of the soil under such ponds is reserved to the public. Your ownership stops at low water mark, consequently, although your farm borders on the pond, your rights in it, or in the ice, are no greater or less than those of any other citizen.

145 Mass. 486. 41 Mich. 318. 1641-47. 108 Mass. 470. 7 Allen, 158. 73 Me. 441. 77 Me. 100. 121 Mass. 539. 131 Mass. 222.

You have a right to cut the ice, but it does not become your property until you have taken it into your possession. It is not enough to scrape off the snow and put up stakes showing where you intend to cut. And you cannot recover any damages of a person who cuts holes through the ice for the purpose of fishing.

26 Kans. 682. 131 Mass. 474. 149 Mass. 322. 84 Me. 155.

If the ice is formed on a river instead of a pond your rights are similar, but not exactly the same. Private ownership of river beds above tide water extends in this state, as in some others, to the thread of the stream. So that you have a right to harvest the ice up to that line. But such rivers are public highways, and you may be liable to a traveller injured by your acts in cutting the ice.

44 Mich. 229. 101 Ill. 46. 18 Me. 433. 79 Me. 456,

CHAPTER XV.

TRESPASSING ON THE FARM.

THE general rules in regard to trespassing on another's lands are pretty well understood in the community, but on one point there is sometimes an erroneous impression. It is often thought, that, if a person simply crosses your land for twenty years, he thereby always acquires a right to continue the practice; but this is far from being universally true. The very foundation of acquiring such a right (prescriptive right as it is called) is, that the crossing must have been adversely to the land-owner, contrary to his wishes, or at least without his permission, express or implied, and under a claim of a legal right so to do, whether the farmer is willing or not. If, therefore, the person crossing does so with the permission, or by the mere indulgence, of the land-owner, and not under any claim of right, it is wholly immaterial how long the custom has continued. Forty years' travel by consent of the owner would not give any right to continue to pass after he had been forbidden to do so; and, to avoid any misapprehension in such cases, it is wise for the farmer to put up notices forbidding it, as we so often see done. And this not only makes it clear that thenceforward the intruder is a trespasser, but, by a recent law in Massachusetts, he is also made liable, after such notice, to a fine of twenty dollars for wilfully crossing or entering upon any garden, orchard, mowing-land, or other improved

or enclosed land, between the first day of April and the first day of December. Maine also has a similar law. This is still more criminal where the intruder has fire-arms.

Pub. Sts. c. 203, sec. 99.
St. 1890, c. 410 §100.

If, also, a man's object in coming into your premises is to steal your fruit, cranberries, or other crops, that itself is a crime, although he does not accomplish his purpose: and you may put him out by force, after notice to leave, using no unnecessary violence. But you cannot lawfully set spring-guns, man-traps or other instruments which may do him grievous bodily harm, without giving notice of such hidden dangers. Perhaps if ample notice was posted up, of the existence and location of such instruments of injury, a person trespassing might have no remedy for his misfortune. But even this has been pointedly denied in this country. For it is nothing less than murder to deliberately and intentionally kill another, merely for trespassing on your grounds.

St. 1890. c. 403.
4 Bing. 628.
37 Iowa, 613.
31 Conn. 479.
7 J. J. Marsh. 478.
3 B. & Ald. 304.
59 Ala. 1.

The old school-books, in my early days, had a picture of boys stealing fruit in the boughs of an apple-tree, with a farmer picking up stones, and a maxim, that, if words and grass did not answer, he might throw stones. But, if in so doing you should happen to put out the boy's eye, it might go hard with you; for you have not a right to kill even your neighbor's hens while scratching up your melons and cucumbers. The custom to do so, and toss the fowls over the fence, may afford some satisfaction to the gardener; but it makes him liable to pay the full value of the nuisances, although he had repeatedly warned their owner to keep them at home, or take the consequences.

14 Conn. 1.
107 Mass. 406.
10 S. & R. 394.

A farmer in Connecticut, who had been greatly annoyed by his neighbor's hens scratching up his garden seeds, spread a quantity of Indian meal, mixed with

arsenic, on his own land, which had the effect designed; but he had to pay for the fowls. Shooting an animal merely because it is trespassing on your grounds, and injuring your crops, is not justifiable. But this is not so as to a flock of doves, while busy pulling up your early peas or sweet corn. While so engaged you may shoot and eat them with impunity. 8 Jones N. C. 35.

Whether this rule applies to an old cat which is after one's chickens, I don't know; but I mean to try it the first chance I have. Not but what a cat may be in the protection of the law on her owner's own premises, as a man in Canada recently discovered, when he had to pay ten dollars for the fun of shooting one. But when she has a chicken in her mouth, or is just ready to spring at one in your own yard, the case may be different. And in the case of the fowls above spoken of, the safer way, instead of shooting them, would be to buy a smart game cock that would soon lay them out in windrows, as a good old deacon I have read of did!

8 Johns. 233.
14 Conn. 1.
64 N. C. 44.
4 Tex. 492.
60 Ill. 211.
8 Up. Can. Law J. 14.
9 Pick. 15.

The general rule seems to be that a farmer has the right to kill the animals of another, if they are in pursuit of his own, and there is reasonable ground to apprehend that they will attack and destroy, or carry off the latter.

This is clearly so in the case of trespassing dogs, cats, hogs and such animals. The right to kill such animals is not confined to the very moment when they are in pursuit, or about to immediately attack the farmer's animals; but if from their habits or former conduct, there is good reason to believe one's own property is in danger, a man need not wait until the dog has the lamb by the throat, or the cat has the chicken in its mouth, before he can fire.

Cro Jac. 45.
3 Lev. 28.
Lutw. 1494.
9 Johns. 233.
6 Penn. St. 318.
4 Dev. & Bat. 110.

An interesting illustration of this right to kill other people's animals recently occurred in the northern

part of New Hampshire. A farmer had a flock of geese swimming around his pond, and hearing them all vigorously cackling one morning, came out and saw four minks swimming after them in hot pursuit, and within a rod of them. As soon as the minks saw him they stopped pursuing the geese, and ran out of the water on to a little island, and then stopped a minute, but long enough for the farmer to get aim, and he killed them all at one shot. A law of New Hampshire forbids any man to kill any minks, sable, or otter between May and October under a penalty of ten dollars for every animal so killed. And the farmer being prosecuted for this penalty, it was decided after a very elaborate examination, that he had a right to kill them, notwithstanding the law, if necessary to protect his own animals from destruction, and that it was not necessary he should first try to drive his own animals out of harm's way before killing their assailants. The opinion in this case is very elaborate and very interesting.

53 N. H. 398.

One of the most annoying forms of trespass to the farmer is that of hunting and fishing. Many persons seem to suppose, that by force of some general custom, or otherwise, they have a right to hunt or fish over another's ground as they please; but this is quite erroneous, though in some states a previous notice is thought to be necessary, to enable the farmer to prosecute a hunter or fisher so engaged. In all ordinary streams and ponds the right to fish belongs solely to the person owning the adjoining land. If the stream is navigable,— that is, if the tide ebbs and flows,— the public have a right to boat up and down it, and to fish from their boats, but not to go on shore to do it. But in a stream where there is no ebb and flow of the tide, but which is navigable in part, although the public have the same right to boat up and down as before

4 Pick. 145.
13 C. B. (N. S.) 844.
4 Q. B. Div. 9.
5 H. & J. 195.
29 Mich. 625.

2 Conn. 481.

stated, probably they have not to fish from boats, except by permission of the riparian owner, express or implied. By a very early law in Massachusetts and Maine, if a farm contains a "great pond," — i. e., a pond containing over ten acres, — the public have a right of fishing and fowling there, "and may pass and repass on foot through any man's 'propriety' for that end, so they trespass not on any man's corn or meadow." But a recent statute has restricted the right of the public to fish in great ponds unless they exceed twenty acres, and consequently the riparian proprietor of any such pond now has the exclusive control of the fisheries therein existing.

Pub. Sts. c. 91, sec. 10.

The recent laws authorizing fish commissioners to lease large ponds to private parties may, of course, modify the former rights of the public therein.

Pub. Sts. c. 91, sec. 12.
108 Mass. 450.
110 Mass. 175.
119 Mass. 300.

As to salt-water fishing, the law is somewhat peculiar; for although the owner of the upland ordinarily owns the land down to low-water mark, as before stated, yet any other person may go there, and dig clams or other shell-fish, if he can do so by water, and without crossing the upland in going or returning. The Legislature may sometimes abridge or modify this right, and vest it exclusively in some person or persons, but the ordinary rule is as above stated.

103 Mass. 216.
8 Cush. 347.
7 Gray, 440.
37 Me. 472.
47 Me. 284.
144 Mass. 440.
60 N. Y. 56.
37 N. J. Law, 106.

Statutes have recently been passed as to clams and scallops, which to a certain extent regulate the fishing for the same.

Another still more common and annoying species of farm trespassing, is that of berry-picking; but this practice, although so customary, is clearly contrary to law. And not only is the trespasser himself liable to the land-owner, but all who buy and consume the berries so picked, are in danger. The blueberry-canning establishments of Jonesport, Maine, were recently

compelled to pay more than one thousand dollars to the owners of wild land, over which the berry-pickers had long roamed without leave or license, although the latter had been paid in good faith for the berries as they brought them in and delivered them to the buyers.

6 Me. 220.

CHAPTER XVI.

OVERHANGING TREES.

THE question often arises, who owns the fruit of a tree standing near the boundary line between two proprietors. It is generally supposed that the fruit on the limbs overhanging one's land belongs to him; but this is an entire mistake. If a tree stands wholly on your land, although some of the roots extend into the soil of your neighbor, and derive support and nourishment from his soil, he has no right to any of the fruit which hangs over the line; and, if he attempts by force to prevent you from picking it, he is liable for an assault and battery.

11 Conn. 177.
38 Vt. 105.
25 N. Y. 126.
46 Barb. 337.
48 N. Y. 201.

In one instance a lady, while standing on the fence picking cherries which hung over the line, was forbidden to do so by the adjoining owner, who was at work in his garden; and, in the scuffle to prevent her, she received some bruises on her arm, for which he had the pleasure of paying the neat little sum of a thousand dollars. If your fruit falls into your neighbor's lot, you have, I think, an implied license in law to go and pick it up, doing him no unavoidable damage; but this may not be positively settled as yet.

46 Barb. 339.

113 Mass. 376.
12 Vt. 273.

If, however, a fruit-tree stands directly in the division line, and is what is called a "line-tree," both parties own the tree and fruit in common, and neither can cut down the tree, or seriously injure it, without being responsible to the other.

12 N. H. 454.
31 Barb. 547.
25 N. Y. 123.

Sometimes persons are tempted to poison or secretly kill a neighbor's tree of some kind, which stands near the fence, and casts a baneful shade on their garden plot: but this is dangerous business; and the party

doing so, in Massachusetts or Maine, may possibly find himself inside the county jail for a twelvemonth, where the rooms are apt to be small, and not always very clean! The safer way in such cases is to cut off the limbs which hang over your side, or dig down and cut off the roots, which undoubtedly you have a legal right to do; but it would not be safe to use the limbs for firewood, or otherwise convert them to your own use, lest you have to pay their value, more or less.

While speaking of "overhanging" trees, I may also add a word about shade trees entirely on your own ground. Every man has a right to cover his own ground with fruit, forest, or shade trees, as "thick as they can stand." And if so be a neighbor's house is so near the line that the trees make his house damp or unhealthy, he has not a right therefore to cut down, or prune out the same, but must bear the conse-
99 Mass. 598. quences as well as he can.

One more caution I must give you in regard to overhanging trees; and that is, if you have a tree near your line, which is poisonous to animals, as the yew tree, for instance, and you let the limbs hang over the fence so that a neighbor's cow browses them, and dies in consequence, you are liable to pay for her, for you must not allow such dangerous things to spread from
4 Ex. Div. 5. your premises. I suppose it would be different if the tree stood far away from the boundary line, and the cow strayed into your premises, and there committed suicide: the verdict might then be, "served the owner right:" he had no business to let her trespass on you. That was the case once where a man's cow strayed into a neighbor's sugar orchard, and there drank a bucket full of maple syrup, which caused her
1 Cow. 78. death. Her owner had no redress. I suppose it might be the same if cows break into your potato field, and kill themselves eating potato tops, on which you have used "Paris green."

CHAPTER XVII.

PROPERTY EXEMPT FOR DEBT.

As a general rule no class of people pay their debts better than the Massachusetts farmer; but misfortune may overtake him, as well as others, and he may sometimes wish to know what property he owns which cannot be taken by law to pay his debts. Therefore a few words on that subject may not be amiss.

1. He can, if a householder, *having a family*, retain a homestead for a residence, of the value of $800. But a bachelor, (having no right to have a family,) couldn't very well claim a homestead. 10 Allen, 425.

On the other hand a married man who had once acquired a homestead would not lose it on the death of 12 Allen, 34.
his wife and all his children. But if two farmers own a farm jointly, neither has any homestead in it. 6 Allen, 427.

In order for any one to acquire a homestead, the deed to him should set forth that the estate was to be held as a homestead *or* he should have filed a written declaration to that effect in the Registry of Deeds.

Of personal property a sheriff cannot seize

1. The necessary wearing apparel of a debtor, or of his wife and children. This would also include the materials for such apparel in the process of manufacture. 10 Met. 506.

2. One bed, bedstead, and the necessary bedding, for every two persons of his family; one iron stove used to warm his house and fuel for it, to the value of $50.

3. Other household furniture, necessary for a farmer and his family to the amount of $300; and the word "necessary" is generally construed quite liber-
4 Cush. 359.
11 Allen, 382. ally.

4. Bibles, school-books and library to the value of $50.

5. One cow, six sheep, one swine, and two tons of hay. The word "cow" applies also to a young heifer which has never given milk. If you have two
11 Gray, 211.
8 Allen, 583. cows you may select which you will keep. And one
46 Me. 357.
2 Allen, 219. swine is exempt, though it has been killed and
134 Mass. 401.
15 Mass. 205. dressed.

6. Tools, implements, and fixtures necessary for carrying on your trade or business, not over $100 in value. The words "tools and implements" mean small articles of simple construction and moderate cost, which are ordinarily used by hand, such as shovels, pick axes, hoes, dung forks, etc., not only for
7 Gray, 67. one's self, but for all one's men. Such articles as a farm cart, tip cart, cart harness, whip, farm pung, and a buffalo robe, have been declared to be not
134 Mass. 401. exempt from attachment. Much less would horses or oxen come within this clause.

7. Family provisions to the amount of $50.

This language includes family vegetables still growing in the ground, as well as after they have
16 Gray, 211. been harvested and stored in the cellar. But as it does not exempt vegetables, etc., raised for sale, if so be you have a larger quanity on hand than the exemption covers when the officer comes with his execution, you should select $50 worth, and let the
4 Allen, 157.
5 Allen, 158. officer take the rest.

8. A family pew in church.

9. The boat, fishing tackle and nets of a fisherman, to the value of $100 and as a farmer may also

be a fisherman, he could undoubtedly claim these articles as if he were only a fisherman.

10. Rights of burial and tombs in a cemetery.

11. A family sewing machine, if not worth over $100.

Thus it will be seen property of over $2000 value in the aggregate, is exempt from execution or debt; but the better way is for the farmer not to get into debt, and then he won't care to know whether much or little is beyond the officer's power to touch.

CHAPTER XVIII.

BEWARE OF TRAPS.

I DO not propose to discuss at length the general laws of purchase and sale, or of deceit and warranty, about which so much may be said: but there are two phases of special interest to the farmer. One is the disappointment resulting from the purchase of impure or spurious garden-seeds. It is now well settled, that if a dealer in seeds sells an article marked and put up under a certain name, and it is so billed to the purchaser, this amounts to an absolute warranty or guaranty that the seeds are what they were bought and sold for; and, if they turn out not to be, the farmer has a remedy against the seller for the money he paid for the seed. And this is so, although the seedsman was honest in the sale, and bought them for exactly what he sold them for; and the seller would have a remedy back on the person who sold to him. But merely to get back the money paid for the seed would fall far short of the loss to the farmer. His time, labor, fertilizers, profits on his crop, are all gone; and the question has been much agitated, whether the seedsman is liable for all this loss. And it is now generally understood, that when he either expressly warrants the seed to be of a particular kind or variety, or when he so sells it without any reservation or limitation, and thus creates an implied warranty, he is

18 Q. B. 560

liable for all the damages directly flowing from the farmer's use of such seed.

In one instance a market-gardener bought of a seedsman "early strap-leafed, red-top turnip-seed," but which proved to be "Russia late," not salable in market, and only fit for cattle; and he was allowed to recover of the seller the difference between the value of the crop which was raised and a crop of early turnips on the same soil, even though the seedsman honestly thought the seed was as represented. And in case the farmer is so imposed upon, and the seed proves entirely worthless, and his crop of no value, he can make the seedsman pay not only the cost of the seed, but also for all the labor incurred, and the fair profit he would have had from the crop, had the seed been what it was represented to be. In one case the Shaker Society at Watervliet, N. Y., had to pay heavy damages, because a lot of seed which they sold as "Bristol cabbage seed," came up a wild cabbage running all to stalks and leaves, caused by the fact that they set their Bristol seed cabbages in the spring, near several rows of "Red Dutch," and the two varieties intermixed, producing a worthless cross. To avoid this serious liability, seedsmen at the present day very often print upon their seed-packages that they do not warrant any seed they sell, which may perhaps relieve them from their responsibility, unless they knew the seed was not true to name.

7 Vroom, 262.
9 Id. 496.
34 N. Y. 634.

69 N. Y. 62.
9 Hun, 556.
78 N. Y. 393.

7 Hun, 428.

The other subject to which I alluded is the "lightning-rod nusiance," so called. For several years past the agricultural community has been overrun by swarms of unprincipled men offering for sale "improved lightning-rods," "patent pitch-forks," "white-wire clothes-lines," "force pump washers," etc. With persuasive cunning they prevail upon the farmer to accept the agency for the sale of the article in his

town or county, with reckless assurance of the profits to be realized therefrom. They ask him to sign a printed contract for that purpose, which he unsuspectingly does. The articles either never come to hand, or, if so, they are worse than useless; and the agent thinks that is the end of the transaction, and writes to have the rubbish taken away. A few months afterward another man comes round,—a confederate rascal with the former,—and presents the farmer with his printed promissory note for a hundred dollars or more, and pretends he bought the same in good faith, and demands payment. The signature to the paper is genuine, and the farmer is amazed to know how it came there. Nothing but a law-suit will reveal the fact that the strip of paper now presented has been cut off from the bottom of his agency contract, and made to appear a very different affair from the real one, and the present owner is always ready to swear he is an innocent holder for value, and without any knowledge about the origin of the note; having taken legal advice, that, if so, he can probably recover the amount of the note, notwithstanding the outrageous fraud, as has been frequently decided. While in many states, so anxious is the law to protect the honest farmer from the schemes of such an unprincipled gang of swindlers, that it has decided, that if the signer was not really guilty of negligence, in the eye of the jury, in being misled by such a rogue, he is not bound to pay the note to anybody, indorsee or not.

55 Ind. 140.
48 Ind. 436.
64 Ind. 120.
29 Iowa, 498.
56 N. Y. 137.
29 Wisc. 194.
2 Lans. 477.
L. R. 4 C. P. 704.
54 Ill. 196.
22 Mich. 479.
51 Mo. 245.
79 Penn. St. 370.

The honest farmer is in the hands of a set of accomplished villains; and in many instances their plans have been so well laid, that either he is compelled to pay the whole note, or to avoid the expenses of a law-suit, compromise the claim. Beware of these miscreants; shun them as you would a rattlesnake. If there is one place hotter than another in the world to

come, they deserve that corner, living as they do upon premeditated, cold-blooded fraud and deception.

I have thus imperfectly touched upon some of the leading rights and liabilities of farmers; and if, in this brief space, I have been able to impart any valuable information, or save you from the many entanglements of the law, or even to interest you but for the passing hour, my purpose has been accomplished.

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and when not liable, 36.
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If fired by locomotive spark, who is responsible, 37.
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WOOD-LOTS,
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